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CURRENT TOPICS

Marriage and Divorce

THE Church of England Moral Welfare Council has just republished in booklet form the evidence which was presented by His Grace the ARCHBISHOP OF CANTERBURY to the Royal Commission on Marriage and Divorce, and has included in the new edition a reply by His Grace to subsequent questions by members of the Royal Commission. The reply concedes that " in the nation as it is, divorce laws are inevitable," but adds that Church opposition to extended grounds for divorce is based wholly on a moral judgment as to the well-being of society. The Church is said to be mainly concerned " to reverse the process of the last few decades, to prevent further deterioration of the public esteem in which the institution of marriage is held and to restore a true conception of the life-long obligation of marriage." In answer to the criticism that the choosing of adultery and cruelty as the only grounds of divorce emphasised unduly the physical aspect of marriage, His Grace replied: " It is not the Church, but the law, which has selected the grounds for divorce." He added that the proper response to an act of adultery was forgiveness on the one side and repentance on the other, and not divorce. The Church, he said, would wholly approve if the law were no longer content to accept a single act of adultery as a sufficient ground. It was strange, he said, that the Church should be criticised for regarding acts which the New Testament called sins as offences. The suggested abolition of matrimonial offences and substitution of a general discretion of the court would mean that each judge would do as he pleased. The law had to define matrimonial obligations and judges had to apply the law. Also published in the new edition are extracts from the Minutes of Evidence taken before the Royal Commission, and a scholarly refutation by Dr. SHERWIN BAILY of the charge that Cranmer intended to alter the law so as to facilitate divorce and re-marriage. The booklet can be obtained from the Church Information Board, Church House, Westminster, S.W.1. (2s. 6d. or by post 2s. 8d.)

Estate Duty Practice

THE current issue of the *Law Society's Gazette* draws the attention of solicitors to a number of points of estate duty practice. Referring to s. 33 (1) of the Finance Act, 1954, which substitutes a new s. 16 (3) of the Finance Act, 1894 (relieving unsettled estates not exceeding £2,000 from aggregation with settled property passing on the same death), it notes that the new section applies only in the case of deaths occurring on or after 30th July, 1954, and that it increases the figure of £2,000 to £10,000 and requires settled property provided out of the deceased's resources, or of which he was competent to dispose and has disposed, to be grouped with the unsettled property for the purpose of determining whether relief is due under the subsection. The Chancellor of the Exchequer has, therefore, decided that estate duty concessions Nos. 12 and 13 (whereby in the application of relieving sections certain property which is not strictly settled property, e.g., property held in joint tenancy, is treated as settled property, and reversionary interests which are settled property

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are treated as free estate, where such treatment is to the taxpayer's interest) shall not be granted in cases falling under s. 16 (3). Another point of interest is in relation to the ruling of the Board of Inland Revenue dated 23rd July, 1953, which it reversed on 18th March, 1954, as a result of *Sneddon* v. *Lord Advocate* [1954] A.C. 257; *ante*, p. 105. The Board have assured the Council of The Law Society that this matter will be further considered in the review of estate duty anomalies at present being undertaken by the Chancellor of the Exchequer. They have given the further assurance that in cases where a sale of property took place between the dates of the two rulings, they would not seek (whatever the date of the donor's death giving rise to the estate duty liability) to charge the property in the hands of the person who bought it between those dates, or in the hands of any person deriving title under him.

Purchases of Land by Local Authorities

SOLICITORS acting for local authorities on purchases of land under statutory powers, whether by agreement or compulsorily, are asked in the current issue of the *Law Society's Gazette* to bear in mind s. 12 of the Finance Act, 1895, as well as s. 28 of the Finance Act, 1931, which require production of the conveyance or other instrument of transfer to the stamping authorities. The Controller of Stamps has stated that production of an instrument under one of the sections does not satisfy the requirements of the other section, but both can be effected on the same occasion, if the applicant expressly indicates whether the document is presented under one Act or the other or both. An application for stamping with the appropriate duty can be made on the same occasion. The Board of Inland Revenue say that s. 28 requires production of the instrument of transfer but in the absence of s. 12 it would be possible for a purchaser, authorised by statute to purchase real property, to effect the transaction by agreement or by some other method not involving payment of *ad valorem* duty. Such a method would not transfer the legal title but it might meet the purchaser's requirements, especially where no subsequent re-sale is contemplated. Although probably infrequent, such cases would not be met by s. 28, and therefore the Board's view is that s. 12 should continue in force.

Rating Valuation of Commercial Premises

IN a written answer to a question in the Commons on 2nd December, about the basis of the current revaluation of property, the MINISTER OF HOUSING AND LOCAL GOVERNMENT said that he understood that occupiers of shops and offices were anxious about the revaluation which was now proceeding in accordance with the provisions of the Local Government Act, 1948, as amended by the Valuation for Rating Act, 1953. This anxiety arose from the fact that shops and offices and other commercial premises were being assessed on present-day values, whereas dwelling-houses were being assessed on 1939 values, and industrial property, although assessed on present-day values, was partially de-rated. However, it was by no means certain that in practice the change in the incidence of the rate burden would be as great as might, at first sight, be expected. In the first place it should not be assumed that the assessments of dwelling-houses would not be increased. In 1934, when the existing valuation lists had been made, houses had generally been assessed by reference to the level of restricted rents, whereas, for the purposes of the forthcoming revaluation, the free market letting value in 1939 was to be taken as the basis. Local authorities also had adopted widely differing standards for the valuation of various types of property. In some areas, dwelling-houses had deliberately been under-valued on grounds of social policy. In others, industrial premises had often been assessed on a favoured basis in order to attract industry to the area. Now that all valuations were to be made on a national basis by the Inland Revenue, any bias of that kind in favour of dwelling-houses and industry would be eliminated. A postponement of revaluation pending consideration of fresh changes in the basis of valuation would have the effect of prolonging the countless anomalies which existed under the present system, and the practice of piecemeal re-assessments would be adopted much more generally, thereby creating fresh inequalities and confusion. It would also prolong the present dissatisfaction over the allocation of the Exchequer Equalisation Grant, an equitable allocation of which would not be achieved until valuation was put on a uniform national footing.

Relativity in Cruelty

"OH, you do not know the East End," was the reply of a respondent in a divorce case on 10th December before Mr. Commissioner BLANCO WHITE, when questioned about occasions when he slapped his wife's face. Improving on this he referred to "fair wear and tear" and "what a woman bargains for when she gets married." Mr. Commissioner Blanco White said that in deciding whether something was cruelty or not regard must be paid to the habit of the neighbourhood, the practice of the tribe, but we must also remember what were the reasonable moral views of the country as a whole. Although the court found cruelty established on other grounds, it did, at any rate *obiter*, pronounce that what may be cruelty in Park Lane is not necessarily cruelty east of Aldgate Pump, while at the same time conserving the eternal verities in the phrase "the reasonable moral views of the country as a whole." "Hearts just as pure and fair," sang a peer in "Iolanthe," "may beat in Belgrave Square, as in the lowly air of Seven Dials," and the same impartiality should be shown by the courts in judging cruelty and other matrimonial offences. The suggested inclusion of a fair wear and tear clause in marriage contracts, where the conditions to be expected are rougher and likely to produce more friction, has its reasonable as well as its humorous appeal.

Companies and Half-Yearly Accounts

THE Chairman of the London Stock Exchange, Sir JOHN BRAITHWAITE, replied on 10th December to a criticism made by the Institute of Directors of a lecture which he had delivered on 16th November to the Chartered Institute of Secretaries. The criticism was to the effect that he had suggested a measure of compulsion or restriction in the manner in which companies should present their accounts, and that the question of issuing half-yearly reports was a matter best left to the boards of individual companies in the light of their own circumstances. Sir John denied that he had made any suggestion of compulsion or restriction. Quoting from his lecture, he said that he had spoken of the desirability of more frequent statements, whenever appropriate or reasonably possible. It needed little imagination to conceive of cases in which a half-yearly progress report might be misleading rather than helpful, but in many cases there should be no difficulty and a few companies had already set an excellent example. Now that honour is satisfied and both parties seem to be in closer agreement, it is to be hoped that in the interests of confidence, which is the basis of investment, no colour will be lent by managements to the impression that the requirements of the Companies Act, 1948, as to disclosure are regarded by them as the last word on the subject.

THE TOWN AND COUNTRY PLANNING ACT, 1954—II

THE first part of this article dealt with conveyancing problems arising from the new Town and Country Planning Act. The next subject for consideration comprises the cases where some early action will be required on behalf of clients. These fall roughly under four heads:—

(1) Claims for payments under Pt. I of the Act;

(2) Claims for payments under Pt. V of the Act;

(3) Adjustment of claims for compensation on the compulsory acquisition of land where there was no claim under Pt. VI of the 1947 Act and hardship has been caused, as in the well-known case of the late Mr. Pilgrim of Romford;

(4) Re-opening of claims under Pt. VI of the 1947 Act in the case of certain charity land.

(1) *Claims for payments under Pt. I of the Act*

These arise in various cases where transactions in land have already been adversely affected financially by the financial provisions of the 1947 Act, e.g., where a development charge has been paid or the price of land on a sale has been depressed, or where a claim under Pt. VI of the 1947 Act was sold. The various cases known as Case A, Case B, Case C and Case D, Cases analogous to Case B and residual payments in cases analogous to Cases A and B were described at p. 205, *ante*, and one or two small amendments were mentioned at p. 627, *ante*. No substantial amendments have since been made, and it is, therefore, unnecessary to set the qualifications out again here.

The method of applying for payments is prescribed by recently issued regulations, the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599). Application has to be made on a form to be obtained from the Central Land Board. The completed form must be sent to the Board *on or before the 30th April*, 1955, though the Board have power to extend the period in any particular case. The shortness of the period is due to the fact that the making of payments under other Parts of the Act is governed by the amount left over from the original £300m. fund claims after the Pt. I payments have been made. Any delay in ascertaining the cases in which Pt. I payments have to be made would therefore defer the making of payments under the other Parts.

The regulations provide for the Board, on determining a claim, to give notice to the applicant of their findings as to the amount of the payment to be made; they are also required to give notice to anyone interested in land whom they think may be substantially affected by any apportionment involved in the proceedings. Either the applicant or any such person then has thirty days in which to give notice to the Lands Tribunal that he disputes the findings or the apportionment (reg. 6).

(2) *Claims for payments under Pt. V of the Act*

These claims arise where planning restrictions have been imposed, by the refusal or conditional grant of permission or by the revocation or modification of a permission, before the 1st January, 1955.

These claims will have to be made to the Minister within *six* months of this date, though the Minister may extend this period in any particular case, so here again advice should be given fairly soon to clients about the making of claims (ss. 22 (2) and 45 (1)).

The Pt. V claims were referred to at pp. 241 and 242, *ante*. With one exception no substantial amendment to Pt. V was made in the House of Lords. This exception puts right the anomaly in the Bill noted in this previous reference which would have prevented a client claiming under Pt. V or Pt. I if, having suffered planning restrictions, he sold his land to a private individual or company at a price depressed in consequence of these restrictions between 18th November, 1952, and the commencement of the 1954 Act. He is now entitled to claim under Pt. V. If the sale took place before 18th November, 1952, his claim, as before, must be made under Case B of Pt. I of the 1954 Act.

Claims under Pt. V must be sent to the local authority, i.e., the county borough, or in an administrative county normally the county district council concerned, in the form prescribed by the Schedule to the recently issued Town and Country Planning (Compensation) Regulations, 1954 (S.I. 1954 No. 1600). Forms of claim may be obtained from local authorities, together with a short leaflet for the assistance of claimants. The local authority transmit the claim to the Minister, who will review the decision in accordance with ss. 24 and 45 of the Act and ultimately notify his findings, as to the amount (if any) payable, to the applicant and to any person substantially affected by any necessary apportionment (reg. 6). The applicant or any such person then has thirty days in which to give notice to the Lands Tribunal that he disputes the findings or the apportionment (reg. 7).

(3) *Adjustment of compulsory acquisition claims*

As noted at p. 242, *ante*, the 1947 Act adopted the existing use basis of compensation for compulsory acquisition of land and this is continued by the 1954 Act. The 1954 Act does provide, however, for the payment, either under Pt. I, if the acquisition is before the 1st January, 1955, or under Pt. III if after, of up to the agreed amount of the 1947 Act claim on the £300m. fund. If there was no claim, there was no compensation to be paid to the unfortunate owner beyond the existing use value, with the result that he might only receive £15 for a £300 building plot. It was this which led to the late Mr. Pilgrim taking his own life in between the debates on the Bill in the House of Commons and those in the House of Lords, with the result that a clause to put the owner substantially in the same position as if a claim on the £300m. fund had been made was introduced into the Bill in the House of Lords. This section, as it has become, is explained in more detail later in this article. It applies only to cases where notice to treat is served after the 1st January, 1955.

The Minister in the House of Commons debate on the Lords amendments said that the legislation could not be made retrospective, but that, in the case where a transaction for purchase *had not been completed* at the date the Bill came into force, if local authorities wished to make an *ex gratia* payment, as the Romford Borough Council had done to Mrs. Pilgrim, the Government would be ready to support them. Where appropriate these *ex gratia* payments would rank for Exchequer grant in the same way as if they had been made under the clause in the future.

If, therefore, any reader has an uncompleted case of this kind in hand, the negotiations should be re-opened on the lines of the new section.

(4) *Re-opening of charity claims under Pt. VI of the 1947 Act*

The operational, as distinct from the investment, land of a charity was given special treatment under s. 85 of the 1947 Act by being granted exemption from development charge; in other words its development value was not taken away by the 1947 Act, but, conversely, no claim on the £300m. fund under Pt. VI of that Act could be made. Under subs. (5)

of s. 85 the Minister could give a direction that land not actually in operational use by the charity, but likely to come into such use, could be treated as land to which s. 85 applied. As noted at p. 224, *ante*, in such cases the charity will probably have made a claim on the fund before applying for a direction but abandoned the claim on the receipt of the direction, which at that time was regarded as more favourable than the claim. Now, the claim would be more favourable, if the land is still undeveloped, and para. 12 of Sched. I to the new Act enables a charity to ask the Minister to revoke such a direction *within six months* of the commencement of the new Act, so that the claim can be re-opened.

This concludes the cases where early action is required. Before, however, turning to the Lords' amendments to the Bill not already covered in this article it is as well to consider the method of making claims under Pt. II of the 1954 Act in respect of planning restrictions imposed after 1st January, 1955. The procedure laid down in the 1954 Compensation Regulations for Pt. V claims applies also to Pt. II claims. The claim in a Pt. II case must be made within six months of the decision imposing the restrictions, though here again the Minister has power to extend the time (s. 22 (2)). The prescribed form of claim under Pt. II is the same as for Pt. V and a leaflet dealing with claims under Pt. II will also be obtainable in due course from local authorities. Indeed it is the Ministry's intention (circular No. 78/54) that where an authority make a decision on which it appears likely that a claim for compensation could be founded the authority should send a copy of the leaflet with the decision. In the case of a Pt. II claim the provisions relating to review by the Minister of the authority's decision are contained in ss. 23 and 24 of the Act.

Two important amendments affecting the right to claim compensation for planning restrictions were made by the House of Lords. The first deals with the difficulty noted at p. 224, *ante*, whereby a developer who showed a service road for his proposed development in his application plan could not obtain compensation for the cost of construction of the road unless the authority not only approved the plan but also imposed a condition requiring him to construct the road. Now s. 16 (3) provides that the Minister may certify that he is satisfied that particular buildings or works were only included in an application because the applicant had reason to believe that permission for the other development in the application would not have been granted except subject to a condition requiring the construction of those buildings or works. If the Minister so certifies then the effect will be the same as if such a condition had been imposed. Although the normal case covered by the provision will be that of the service road, it will be seen that other buildings and works are also covered. The provision applies to decisions both before and after the 1st January, 1955 (ss. 16 (3) and 42 (3)).

The second important amendment relates to applications for industrial development. By s. 14 (4) of the 1947 Act an application for planning permission for the erection of an industrial building exceeding 5,000 square feet in area cannot be considered by the local planning authority unless it is accompanied by a Board of Trade certificate. Therefore if the Board of Trade refuse a certificate a refusal of planning permission cannot be granted to found a claim for compensation under Pt. II of the 1954 Act. Now s. 59 of the 1954 Act provides that where an application for such development is made without a Board of Trade certificate the local planning authority shall notify the applicant that, if such is the case, they would have refused permission. If they do this the notice will have the effect of a refusal for the purpose of founding a claim for compensation under Pt. II. The provision does not apply retrospectively for the purpose of Pt. V, but this is no hardship as any application made before 1st January, 1955, without result can be repeated. The curious anomaly results, however, that where, but for the lack of a Board of Trade certificate, the local planning authority would have granted permission no claim for compensation is possible, although the applicant is just as badly off because he cannot put up his factory.

The very extensive exclusions from compensation in the Bill, now ss. 20 and 21, discussed at pp. 224, 241 and 627, *ante*, remain virtually unaltered, the only amendment of any substance being the reduction from ten to seven years of the period during which compensation can be excluded if permission is refused on account of the prematurity of the development in relation to the programming of the development plan or the lack of water supplies or sewerage services (see p. 224, *ante*).

The remaining Lords' amendment of importance is the "Pilgrim" section (s. 35) already referred to above. This section in terms provides that, in cases of compulsory acquisition of land after 1st January, 1955, in respect of which no claim on the £300m. fund was made under Pt. VI of the 1947 Act, the Treasury may issue a certificate stating what the unexpended balance payable on the acquisition would have been if a Pt. VI claim had been made. This amount will then be added to the existing use value compensation, unless the Minister concerned with the acquisition, whether as acquiring authority or as confirming authority where the acquisition is by a public authority, is of opinion that it is not just and reasonable that the whole or any part should be added. As a commentary on the words "just and reasonable" it is relevant to cite what the Minister stated on the 22nd November in the House of Commons: "I want to make it clear, as I thought I had earlier, that it is proposed to withhold payment only in cases in which loss has not been suffered as a result of the failure to make a claim." This he described as "a considered statement of policy."

The provisions of the section will also apply to acquisitions by agreement where the acquiring authority have compulsory powers available for use if necessary. It is anticipated that in practice the section will automatically be taken into account by the district valuer in the course of negotiations, and that no special action will be required from the vendor's solicitor beyond drawing attention, if necessary, to the section's applicability.

It should be noted that the section does not apply in respect of compensation for planning restrictions, though where a purchase notice can be served under s. 19 of the 1947 Act it may be possible to surmount this. It still remains to be established, however, that the Government will regard the "Pilgrim" section as applicable where the compulsory purchase is brought on his own head in this way by the owner. Further, the section will not apply where the land had no development value on 1st July, 1948, so that no Pt. VI claim could be made.

Thus it has taken Mr. Pilgrim's tragic action to bring into force this very necessary section to alleviate hardship, and he has accomplished what representations from many responsible quarters failed to do (see, e.g., pp. 187 and 626, *ante*, for repudiations by the Minister of suggestions for the allowance of late Pt. VI claims, which is in effect what the "Pilgrim" section does for cases of compulsory acquisition).

R. N. D. H.

A Conveyancer's Diary

CHAPMAN *v.* CHAPMAN AGAIN ?

THE catchwords above the headnote to the report of *Re Forster's Settlement* in the Weekly Law Reports ([1954] 1 W.L.R. 1450 : the case is also reported shortly at p. 852, *ante*) begin : "*Chapman* v. *Chapman*—Variation of trusts." The decision in *Chapman* v. *Chapman* [1954] A.C. 429 was certainly held to be relevant to, and conclusive of, one part of the present case, but it strikes me that there was another approach to the difficulty which if taken might have by-passed this decision.

For the present purpose a very short summary is all that is necessary to remind the reader of the facts in *Re Forster's Settlement*. At the time of the application a personalty fund valued at something under £8,000 stood limited upon trust for *A* for life, and after her death as to both capital and income in trust for all the children of *B* (who had died some years previously) who should attain the age of twenty-one years. There were three such children, two of whom had attained majority and the youngest of whom was then aged nineteen. Over a period of some years following the death of *B* these three children had been in urgent need of money, and by several orders of the court capital sums amounting to over £2,000 in all had been raised by mortgage of their respective reversionary interests in the fund and applied for their maintenance. The trustees were desirous of paying off this mortgage and a large sum by way of accrued interest thereon, and also another sum which was payable out of the fund in respect of estate duty leviable on the death of *B*, and this desire was shared by all the beneficiaries. Accordingly a draft agreement was prepared under which *A* was to receive a capital sum in consideration of her releasing her life interest in the fund (which sum, as it happens, was substantially less than the actuarial value of this life interest), the two adult children of *B* were to receive their shares of the remainder of the capital of the fund, in which they had vested interests, and the still contingent interest therein of the third infant child was to be deemed absolute and set aside for him pending his attainment of his majority. Although the report does not in terms say so, this distribution of capital was, presumably, subject to payment of all existing incumbrances on the fund : that, after all, was the principal object of the application. As one of the parties to this proposed agreement was an infant, the court was asked to sanction it on his behalf.

The question was whether the court had power to do so. On behalf of the beneficiaries it was submitted that it had, either under its general jurisdiction or under the provisions of s. 57 of the Trustee Act, 1925, counsel for the adult beneficiaries submitting that the transaction could be sanctioned under the statute but conceding that the *Chapman* case was a bar to any sanction under the general jurisdiction, while counsel for the infant beneficiary, whose infancy made it necessary for him to be separately represented, took precisely the opposite view. Harman, J., in a considered judgment, held that he was not entitled to sanction the proposal under the general jurisdiction of the court, but that he could do so under s. 57 of the Trustee Act.

I do not propose to examine in detail the part of this judgment which deals with s. 57. As a result of recent decisions on its provisions, which are all referred to there, this section is now construed as authorising transactions which are of an administrative character only, and does not enable the court to sanction schemes the effect of which is to rearrange the beneficial interests arising under a trust. But here, as Harman, J., found, the charges which formed the main incumbrances on the fund had been sanctioned by the court, and as a result the interests of the remaindermen were subject to an annual wastage which it seemed expedient to stop if possible, and this it was possible to do by authorising the trustees to accept the offer of the tenant for life, *A*, to sell her life interest in the fund at an advantageous price. That, in the learned judge's view, was a matter of administration of the trust, and it being expedient the necessary power to carry out this purchase was conferred upon them. It should be noted that this power, as expressed, was somewhat less than the authority asked for by the trustees, but broadly speaking its conferment must have had the desired effect.

It is the other part of the judgment, that dealing with the general jurisdiction of the court to sanction transactions relating to trust property which are not authorised by the terms of the trust on which the property is held, which is of greater interest, and that, as it seems to me, more for what it might have contained than for what it does contain. As I have said, counsel for the infant defendant pinned his hopes on the general jurisdiction. He submitted that the transaction which it was desired to effect was like that in *Re Trenchard* [1902] 1 Ch. 378, of which Lord Simonds, L.C., had said in his speech in the *Chapman* case that it appeared "to be no more than the sanctioning by the court of a purchase by the trustees of the widow's rights" (the widow in that case had a right to reside rent free in a certain house), thus distinguishing it from the proposal in *Chapman's* case, which clearly involved a rearrangement of beneficial interests arising under a trust. Harman, J., rejected this submission on the ground that he was not at liberty to sanction such a transaction under the court's general jurisdiction unless it could be brought within the salvage principle. According to this principle, although the court has in general no power to sanction acts with reference to trust funds which are not authorised by the terms of the trust, "in the management of a trust . . . it not infrequently happens that some peculiar state of circumstances arises for which provision is not expressly made by the trust instrument, and which renders it most desirable, and it may be even essential, for the benefit of the estate and in the interest of all the *cestuis que trust*, that certain acts should be done by the trustees which in ordinary circumstances they have no power to do. In a case of this kind, which may reasonably be supposed to be one not foreseen or anticipated by the author of the trust, where the trustees are embarrassed by the emergency which has arisen, and the consent of all the beneficiaries cannot be obtained by reason of some of them not being *sui juris* or in existence, then it may be right for the court, and the court in a proper case would have jurisdiction, to sanction on behalf of all concerned such acts on behalf of the trustees as [are] above referred to" (*per* Romer, L.J., in *Re New* [1901] 2 Ch. 534, at p. 544).

But in the view of Harman, J., the situation in *Re Forster's Settlement* did not raise such an emergency within this principle as would entitle the court to interfere. The infant defendant was near majority and would soon have been able to consent to the winding up of the trust if so minded, and in the circumstances the case had not been brought within the salvage line of cases.

It is this reference to a winding up of the trust, which, of course, was the effect of the scheme which the court had been asked to sanction in this case, which gives the clue to

the other line of approach which I mentioned earlier in this article. It is, of course, well established that a beneficiary solely entitled, or a number of beneficiaries collectively entitled, whether jointly or successively, to a trust fund, can if *sui juris* put an end to the trust and call upon the trustees to hand over the trust fund to him or them, as the case may be, to be at his or their absolute disposal; and the trustees, if called upon to do so, will, if need be, be compelled to act upon the direction of the beneficiaries by the court. This is the rule where the beneficiary is solely, or the beneficiaries are between them absolutely, entitled and there are no other interests in the trust fund. But the court has gone farther than this. "Even where it is not *absolutely* certain that no more beneficiaries can come into existence, but it is morally so (e.g., where the ultimate remainder is in trust for the children of a woman who is past the age of child-bearing), the court will, on summons, give the trustees liberty to act according to the directions of the beneficiaries *in esse* so long as the contingent rights of living persons are not prejudiced, although it is understood that the court will not in such cases imperatively *order* the trustees to do so" (Underhill's Law of Trusts and Trustees, 10th ed., p. 427). That is a statement, by a very experienced practitioner in this branch of the law, of the practice of the court, supported, except as to the qualification at the end regarding the refusal of the court to order trustees to hold the fund at the disposal of the beneficiaries as distinct from giving them liberty to do so, by numerous clear reported decisions, and it can hardly be suggested that this practice has been in any way affected by the decision in *Chapman* v. *Chapman*. How could it? That case was an instance of an application for the sanction of the court to a rearrangement of beneficial interests whereunder the members of an unascertained class were to be given collectively an interest, contingent only on their coming into existence, in a defined portion of a fund, instead of the wholly contingent and much more remote interest in the income during a period of the fund, which was the only right this class had under the settlement. In the cases dealt with in the passage from "Underhill," the interests of all persons entitled to the fund are vested and ascertained, subject only to a possibility which in law must be treated as existing but which in practice the court permits the trustees to disregard, of other children being born to the life-tenant. For practical purposes, there can be no addition to the class of beneficiaries in this latter kind of case and no redistribution of beneficial interests, because the existing beneficiaries between them are entitled to the whole beneficial interest.

The application in *Re Forster's Settlement* could not be brought within the practice referred to in this passage because the beneficiaries were not all *sui juris* at the time when it was made. But it seems to me that the same broad principle may be applied both to this case and to the cases which fall within this rule of practice mentioned in "Underhill," because in the circumstances of *Re Forster's Settlement* also there could be no addition to the class of beneficiaries. What was asked for, amongst other things, in the application was that the interest in remainder of the infant beneficiary in the capital of the fund, which under the settlement was contingent on his attaining his majority, be made absolute. This was an interest which the other children of *B*, who were entitled by the terms of the trust to the share of the infant beneficiary if the latter died during infancy, could have made absolute in their brother's favour by simply releasing their ultimate remainders to him without the assistance of the court, and if they had done so there would have been no rearrangement of the trusts, so far as the infant beneficiary was concerned, within the *Chapman* decision. The infant beneficiary would have retained his original interest under the terms of the settlement, no more and no less, but he would have had an additional interest under the releases made by the other children of *B* in his favour, the sum of which would have been an absolute interest in an aliquot share in the trust fund. The release of *A's* life interest in the fund, being in part an act of bounty, could be similarly regarded so far as the infant beneficiary was concerned, and it is, after all, only the existence of interests in persons who, by reason of infancy or otherwise, cannot themselves consent to a rearrangement of beneficial interests under a trust, which brings *Chapman* v. *Chapman* into the picture at all. It seems to me that that decision has cast so large a shadow on the law of trusts as to obscure places in which before it was pronounced people used to step with confidence, and it may be that the present case is one which would have been otherwise decided (I mean, of course, on this aspect of the general jurisdiction) a year or two ago. I say this without, I hope, any disrespect for the learned judge who decided the case, for the point which I have sought to make was not put to him, or not put to him in this way; but what needs stressing at the present time is that there are large parts of the law of trusts which the *Chapman* decision can hardly affect at all.

"A B C"

Landlord and Tenant Notebook

RELIEF AGAINST FORFEITURE FOR IMMORAL USER

Grand Junction Co., Ltd. v. *Bates* [1954] 3 W.L.R. 45; *ante*, p. 405, was reported, and rightly so, as an authority on the question of the status of a chargee by way of legal mortgage; and its significance as such was duly expounded in "A Conveyancer's Diary" in our issue of 19th June last (*ante*, p. 417). The plaintiff company, as the contributor pointed out, brought proceedings for forfeiture for breach of covenant in circumstances which were not material to the question with which his article was concerned. It so happens, however, that the facts and the decision may afford a useful aid to any practitioner who, asked whether relief against forfeiture is ever available when the cause of forfeiture is immoral user, is cautious enough to qualify "never" by "well, hardly ever."

It may still be reasonably safe to say "never" when the applicant is a tenant seeking relief under s. 146 (2) of the Law of Property Act, 1925; other recent authorities went far to justify so terse an answer. True, one could stress the fact that the matter was one of discretion; that the conditions of relief propounded by Cozens-Hardy, M.R., in *Rose* v. *Hyman* [1911] 2 K.B. 234 (C.A.)—remedy of the breach as far as possible plus payment of compensation, promise not to do it again, making good any waste—suggested that relief might be granted. But then, looking at and into the more recent *Egerton* v. *Esplanade Hotels, Ltd.* [1947] 2 All E.R. 88 (C.A.) and *Borthwick-Norton* v. *Romney Warwick Estates, Ltd.* [1950] 1 All E.R. 798 (C.A.), and perhaps glancing at *Platts (Frederick) Co.*, v. *Grigor* (1950), 66 T.L.R. (Pt. 1) 859 (C.A.), one might well come to the conclusion that, accepting those principles as stated, the first was one which could not be fulfilled: the breach could not be remedied as far as possible because it could not be remedied at all; or

else to the conclusion that the passage was not intended to be a complete statement of the relevant principles. The latter conclusion is probably correct; for it is preceded by a passage in these terms: "I am aware of the danger of defining the mode in which discretionary powers of this nature ought to be exercised. Yet I think it expedient to attempt to lay down *some general* principles."

The covenant infringed in *Egerton* v. *Esplanade Hotels, Ltd.*, was contained in a licence authorising the use of premises as a high-class hotel, the tenants agreeing that it should be kept and managed as such and conducted so as not to contravene the laws of the land. Illicit intercourse occurred and it was found that the tenants must have known about it. The plaintiff served a forfeiture notice in which he did not require the tenants to remedy the breach; which raised the question whether that notice satisfied the requirements of the Law of Property Act, 1925, s. 146 (2) (*b*): "if the breach is capable of remedy, requiring the lessee . . ." Whether such a breach was remediable consequently took up a good deal of discussion, and comparatively little was said about the exercise of the discretion when Morris, J., had held that the breach was not capable of remedy. But in the part of the judgment concerned the learned judge said that while he appreciated that the keepers of the hotel had had difficulties, and allowance should be made accordingly, their inactivity disentitled them to relief; and I think that much of what was said in the earlier part of the judgment, dealing with remediability, must be taken to be part of the reasoning on which the refusal of relief was based, e.g., "The breach was of such a nature that it must cast a stigma on the premises and impose a taint which can only be removed if those who have brought it are no longer associated with the premises." The Law of Property Act, 1925, s. 146 (1), insists, not only on a notice, but on the lessee failing to remedy a remediable breach "within a reasonable time"; and while the subsection merely prescribed the notice as a condition of taking any step by way of forfeiture, and relief can be granted when a breach is not capable of being remedied at all, the fact that "only time can cure" is a consideration taken into account when the discretion has to be exercised.

The facts of *Borthwick-Norton* v. *Romney Warwick Estates, Ltd.*, were that the defendants, in breach of covenants against nuisance and annoyance, had let the top flat of a house divided into flats to a prostitute, and had ignored complaints made by other tenants, "deliberately shutting their eyes" to what was going on. The judgment delivered by the Court of Appeal by Goddard, L.C.J., did not go into the merits at any great length, and contains this passage: "The discretion given to the court . . . to grant relief against forfeiture is not to be exercised in favour of persons who suffered premises to be used as a brothel"; but the learned Lord Chief Justice and his colleagues expressed approval of the decision of Hilbery, J., at first instance ([1950] 1 All E.R. 362), who had considered that when people were put to such abominable unpleasantness it was not the kind of breach for which it was intended that the court should grant relief. (In connection with these sentiments brief reference might be made to the Rent Act case of *Platts* (*Frederick*) *Co.* v. *Grigor*, *supra*, in which the court upheld a county court judge's dismissal of a claim for possession, brought on the ground of annoyance or nuisance to adjoining occupiers, because, while the tenant's immoral user was proved, no neighbours were called to complain of having been annoyed, etc.)

In another Rent Act case, *Yates* v. *Morris* [1950] 2 All E.R. 577 (C.A.), similar annoyance and nuisance having been duly established, the actual actors being licensees of the defendant, the county court judge had decided to "give her another chance" by granting a suspended order. The Court of Appeal held, first, that the same principles governed the exercise of discretion, in such matters, under the Increase of Rent, etc., Restrictions Act, 1920, s. 5 (2), as those applicable to relief against forfeiture; but, secondly, that as it was a matter of discretion, it ought not to interfere. But two members of the court, Singleton, L.J., and Jenkins, L.J., indicated quite clearly that they would not have suspended the order; indeed, the latter described the tenant as "extremely lucky."

In the light of these authorities, I think it is still reasonably safe to say that, if the applicant for relief has had anything to do with the immoral user, or has failed to take any measures which he might have taken to put a stop to it, his application cannot be entertained. And *Grand Junction Canal Co., Ltd.* v. *Bates* was, in fact, a case in which the applicant established his right to apply as under-lessee—Law of Property Act, 1925, s. 146 (4), not (2)—the relief sought being a vesting order.

The facts were that he had bought the lease of a house run as a guest-house; he and his wife had continued the business, though he spent most of the day at Covent Garden, where he conducted that of potato salesman: they had decided to give up the guest-house business, obtained a new lease, and sold it to an assignee whose subsequent conduct of the establishment was at variance with what her references had led the defendant—and the plaintiff landlords—to expect. The plaintiffs accordingly took forfeiture proceedings based on a covenant expressly prohibiting use for any illegal or immoral purposes, and it may be that they made the assignor a defendant because, by arrangement with the assignee, he and his wife were occupying the basement of the house in consideration of payments of £3 10s. per week pending his removal to a house which was not yet ready for occupation. His application was, however, based primarily on the fact that the assignee had mortgaged the lease to him to secure payment of a large part of the unpaid purchase price. The first defendant did not appear; the applicant's application was somewhat strenuously opposed, the plaintiffs endeavouring to show that he either knew or ought to have known of what was happening right above his head. Upjohn, J., accepted the second defendant's evidence on this point, and rejected arguments based on his failure to be more observant (or inquisitive). The learned judge held that he would not have granted relief to an application based on the sub-tenancy of the basement, because that tenancy was "for a purely temporary occupation for the few weeks while the plumbing of another house was being repaired"; at first sight, the argument seems to cut both ways, but I think that it must be read with an observation that the tenancy would be rent-restricted. And, remarking that he would have thought that any landlord would have been glad to have such a tenant back, Upjohn, J., granted a vesting order and ordered the plaintiffs to pay one-quarter of the defendant's costs.

R. B.

Mr. ANTHONY DAVID BOURNE, solicitor, of Liskeard and Looe, has been appointed clerk to the magistrates at Saltash and Torpoint, in succession to Mr. C. D. McDonald.

Mr. PAUL SMITH, assistant solicitor to Great Yarmouth County Borough Council, has been appointed assistant solicitor to Buckinghamshire County Council as from 28th December, 1954.

HERE AND THERE

MODEL FOR CARICATURE

Two great gifts which the subject of a caricature can present to the artist are dignity (which every well constituted man only assumes by *force majeure*) and some quirk of appearance or behaviour alien to the habits or comprehension of the ordinary member of the public. The normal Englishman takes a healthy pleasure in the idea that pride goes before a fall and likes, if possible, to help it towards its destination. Nor is he particularly tolerant of what he does not understand (who is ?) ; so that foreigners, for instance, however polite he may be to them personally, are, with their superfluous and unintelligible languages, part of the national stock-in-trade of figures of fun. This they need not resent, for it is a position which they share with the entire legal profession. In the intervals of affirming their faith that British justice is the best in the world, the British, when they happen to think of their lawyers, are as likely as not to burst out laughing at the thought of their elvish ways and fantastic attire. Only a minority of the nation has even a fleeting opportunity of observing them at first hand. Visits to a solicitor are hardly more frequent than the churchgoing of the average agnostic Englishman and often correspond to the same occasions—natal, matrimonial or mortal. As for the lawyer in action in a court of law the citizen (apart from the abnormal addicts of the public gallery) has little chance of seeing his goings on save by the expedient of getting into one or other of three extremely uncomfortable boxes, the witness-box, the jury-box or the dock. What he makes of the processes of law, when he gets there, is what the man from the street must always make of a workshop of technicians into which he may make a momentary incursion, the printing works of a newspaper, for instance ; but that he takes on trust the assurance that something very important is being very efficaciously achieved, all the individual actions would appear to him to belong to the lunatic asylum.

ART IN SLAP-STICK

To the stranger who has alighted at Aldwych from the Clapham omnibus, the man who does not know tort from trover or advancement from administration, legal argument might just as well be conducted in the language of Jabberwocky. The witness who has sworn to tell " the truth, the whole truth " and who naively attempts to do so must adjust his mind, if he can, to the concept that truth in that context means " such truth as the law of evidence admits." The whole thing blends the decorative ritual of a religious service with the complexities of a game of ombre and over all there broods the spirit of decorum and dignity, not an ostentatious, arrogant, theatrical dignity, but the far more compelling, subduing dignity of the Athenæum, which induces in the irreverent a frustrated longing to let off a firework or hurl a tomato. Similarly all normal men must inwardly rejoice when a bishop sits on his top-hat or a Cabinet Minister slips on a piece of orange peel, a vindication of that common humanity which the distinguished should welcome as more precious than their fortuitous dignities. The proper function of caricature in relation to legal dignity and technicality is (like the orange peel for the Cabinet Minister) to bring them down to earth, but there is an art in tripping up and slap-stick, which for all its seeming spontaneity and abandon, can never afford to be slap-dash. The caricaturist must know his victim from the inside with surgical accuracy before he can eviscerate him. An artist may never in his life draw a skeleton but he must know the bone-structure of the human body before he can do anything worth doing with its flesh.

NOT SO OBVIOUS

Now, the trouble with most people who set about caricaturing the law is that they don't know the bone-structure and so the thing they produce flops around aimlessly like a coat without a hanger. Dickens knew the law inside as well as out and the gusts of laughter at *Bardell* v. *Pickwick* have echoed from his day to our own. By contrast, the people who made the film of Pickwick knew nothing at all about the law (and precious little about Dickens), never tried to find out and missed every genuine comic point there was in the trial, just as they missed every genuine tragic point there was in the Fleet Prison. No one's asking for " realism " in caricature. Gilbert's " Trial by Jury " is not realistic but, like all good farce, it's true to life. It knows the bone-structure of its subject. Without that you may mean to caricature an ostrich and you might as well be drawing an octopus. That is rather what has happened to the court scene sketch in " Talk of the Town " at the Adelphi with Jimmy Edwards as a judge. I hope no lawyer would be fool enough to criticise the topsy-turvy procedure there by reference to the Annual Practice. (If one knows the sound of Italian well enough one can make a perfectly good burlesque of an Italian song without uttering a word of the actual language.) An occasional flash of wit strikes home but mostly the nonsense has no relation to legal nonsense—though there are rich enough stores of that available if only you care to look for it. By the time the judge has fallen off his chair for the fourth time one begins to feel that one knows that particular joke. Need he have fallen back on it so often ? Mr. Edwards obviously knows his lawyers far less well than his politicians. His electioneering address later in the show was much more restrained, much less elaborate and much funnier. But it's only one (and mostly the duller) sort of lawyer who goes to the theatre for " shop." There is spectacle in this production which makes it in every sense a Show (with a capital) and for a sweet oblivious antidote to legal preoccupations I know nothing currently so effective as the dancing of the John Tiller Girls. Is it their precision ? Their looks ? Their figures ? Their verve ? It's the lot. Their performance has something never seen in the productions at the Temple Bar end of the Strand. A pity. That might be a use for the Central Hall at last. Waiting jurors and witnesses would love it, as Lincoln's Inn loves the *Vogue* models who pose for fashion photographs on its terrace and steps.

RICHARD ROE.

BOOKS RECEIVED

Outlines of Industrial Law. Second Edition. By W. MANSFIELD COOPER, LL.M., of Gray's Inn, Barrister-at-Law. 1954. pp. lxi, 378 and (Index) 21. London : Butterworth & Co. (Publishers), Ltd. £1 10s. net.

The Taxation of Gifts and Settlements including Pension Provisions. Second Edition. By G. S. A. WHEATCROFT, M.A. (Oxon), a Master of the Supreme Court (Chancery Division). 1954. pp. xxix and (with Index) 194. London : Sir Isaac Pitman & Sons, Ltd. £2 2s. net.

The Landlord and Tenant Act, 1954. By S. W. MAGNUS, B.A., of Gray's Inn, Barrister-at-Law. Reprinted from Butterworths Annotated Legislation Service. 1954. pp. xii and (with Index) 264. London : Butterworth & Co. (Publishers), Ltd. £1 2s. 6d. net.

Motor Claims Cases. Third Edition. By LEONARD BINGHAM, Solicitor of the Supreme Court. 1954. pp. xlvi and (with Index) 660. London : Butterworth & Co. (Publishers), Ltd. £2 15s. net.

REVIEWS

The New Law of Landlord and Tenant. A Guide for Agents and Others to the Act of 1954. By PETER ASH, M.A., of the Inner Temple, Barrister-at-Law. 1954. London: The Incorporated Society of Auctioneers and Landed Property Agents. Price to non-members, 2s. 6d.

This booklet is a companion to the author's "Housing Repairs and Rents" (reviewed at p. 685, *ante*) and does not, as its title might possibly lead one to suppose, deal with the Housing Repairs and Rents Act, 1954, but is limited to the changes brought about by the Landlord and Tenant Act, 1954. It is, however, well written and very well arranged, commencing with and concentrating, as one might expect in the case of a work bearing the sub-title "A Guide for Agents and Others to the Act of 1954," on Pt. II of the statute, for the changes in the law relating to business tenancies are indeed more revolutionary, and intended to be more lasting in their effect, then those wrought by the other Parts. They may, indeed, be more far-reaching than the author himself appears to think likely; his quotation from Jessel, M.R.'s suggested definition of "business" in *Smith* v. *Anderson* (1880), 15 Ch. D. 247 (C.A.), stops just before an "or . . ."; and the decision itself, not concerned with any tenancy, seems less likely to prove useful than say, *Rolls* v. *Miller* (1884), 27 Ch. D. 71 (C.A.). And whether a writ of *mandamus* is the proper, or the only remedy, for a refusal to comply with a notice requiring information under s. 40 is perhaps questionable; another author has suggested that an action might be brought for damages for breach of statutory duty; it is, indeed, unfortunate, that the Legislature has not seen fit expressly to provide any sanction or to deal with cases in which the recipient of the prescribed notice, like many an intending vendor replying to requisitions, says, in effect, that he does not know the answer. This is, however, a point not likely to trouble many people; and as a guide the booklet is more than adequate. One may add that the style is a very pleasing one, especially to those who appreciate well-chosen metaphors, of which the author makes much use.

The Spirit of Liberty. Papers and Addresses of Judge LEARNED HAND. 1954. London: Hamish Hamilton, Ltd. £1 1s. net.

In a foreword to this British edition of his collected papers, Judge Learned Hand describes them as being without much, if any, coherence. But immediately he counters this excessively modest apology by referring to their consistent background as one familiar and congenial to British readers. Congenial, indeed, it is; familiar, alas, not so much as productive of an indefinable nostalgia, a longing for the spacious days when English philosophers were as tenacious of the broader fundamentals of civilised thought and as patiently meticulous in explaining their application. For Judge Hand, an "American institution," the publishers call him, presents the paradox of a traditionalist entrenched in a progressive society and savouring every moment of it.

The title of the book is appropriately chosen, not only as having special application to the best known of the pieces reproduced, but also as typifying the instinct of tolerance which informs them all. The papers range from Hand's graduation day oration in 1893, through articles, speeches, essays and memoirs, thirty-six of them in all, to an address delivered in 1952 by way of acknowledgment of a degree, a wholly characteristic utterance demanding, as the speaker had demanded many times before in the course of his long career, "a fair field and an honest race to all ideas." "A counsel of scepticism" he elsewhere calls this cardinal tenet of his faith. It is reassuring to read from the editor's notes how wide and how spontaneous was the acclaim given by the American magazine press to this and other expressions of the same faith.

The memoirs are of friends and colleagues. To the reader over here they form naturally the least interesting part of the book, though two on Mr. Justice Holmes stand out, as much as anything, for what they inferentially tell us about Learned Hand himself in his admiring appraisal of his old friend. Our favourite essay, dating from 1927, is called the Preservation of Personality, and is an address to students leaving college. The wisdom of its counsel is matched by unrestrained felicity of diction, not overlaid as it is in some other papers with phrases too angularly self-conscious for English ears.

Hand's choice of metaphor is quite shamelessly materialistic. Compared with some philosophical writing it makes his work seem like a Moody and Sankey hymn set against Ancient and Modern. But it is the unmistakable earnestness of the message, addressed throughout a long life to all sorts and conditions of audiences, which gives the book its unusual appeal. The law plays but a minor part in its subject-matter: the English lawyer, nevertheless, will find it a fascinating witness to the integrity of a great American judge.

Income Tax: Maintenance Relief and Agricultural Allowances. By F. E. CUTLER JONES, B.A., Chartered Accountant. 1954. London: Sweet & Maxwell, Ltd. £1 15s. net.

It is perhaps surprising that a book of considerable size can be devoted to the inter-connected subjects of maintenance relief and agricultural allowances, but Mr. Cutler Jones' work is devoid of the semblance of padding. Of all the reliefs available to the taxpayer maintenance relief is the one most frequently overlooked because it cannot automatically be granted by the tax office from information disclosed on the income tax return, but requires application for, and completion of, a form of considerable complexity. This book could do a great deal to alter that situation both by its clear exposition of the law and by the statements of Revenue practice appearing, not only in the chapter on practical points, but throughout the book; the author's familiarity with the practice is illustrated by his treatment of the difficult question of the formulation of claims for the early years of ownership. All forms of property assessments are comprehended within the work, as well as all assessments and claims which can be affected by maintenance expenditure, and the special considerations affecting different types of claimants, for example the clergy.

In the part dealing with agricultural and forestry allowances, the operation of ss. 313 and 314 of the Income Tax Act, 1952, dealing with additional maintenance relief and allowances for capital expenditure respectively, is clearly explained.

Appendices bring the book right up to date with short but adequate statements of the effect of the investment allowances provisions of the Finance Act, 1954, and the Housing Repairs and Rents Act, 1954. The index is exceptionally complete. This book should quickly save its cost because in making out any but the smallest claim it is unlikely that a perusal of the twenty-two paragraphs dealing with admissible expenditure will fail to disclose an item which would otherwise have been overlooked. The publishers have maintained the high standard set by their recent publications in the tax field and produced a work which is pleasant to handle and easy to consult, and which should appeal both to property owners and to their professional advisers, whether solicitors, accountants, land agents or bank officials.

Oke's Magisterial Formulist. Supplementary Volume No. 1 and Second (Cumulative) Noter-up to the Fourteenth Edition. By J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. 1954. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £1 12s. 6d. net.

This Supplement is issued in two parts because of the vast amount of new material arising out of recent legislation. The supplementary volume is bound as a separate book, while the noter-up has a paper cover and can be kept inside the main work. The supplement is cumulative and properly cross-referenced, so that the user of the book will have no difficulty in finding the appropriate and up-to-date form. The supplement is a valuable addition to a valuable work and every magistrates' clerk and prosecuting solicitor should have it.

Spicer and Pegler's Income Tax and Profits Tax. Twenty-first Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A. 1954. London: H.F.L. (Publishers), Ltd. £1 10s. net.

The student or practitioner desiring to learn, or compelled to learn, something about income tax has an enormous choice of books from which to do so. This veteran of forty-seven years and twenty-one editions is, deservedly, one of the most popular, particularly among accountants. Its style is direct and clear, the arrangement sound, and it is written from a practical rather than a legalistic standpoint. Thus the statement on p. 283, "In London, taxi fares are commonly considerable in the case of specialists with hospital appointments" has logically nothing to

do with income tax at all, yet it is no doubt a useful reminder to those dealing with the accounts of medical men.

The provisions of the Finance Act, 1954, are included and all are to be congratulated upon bringing out so quickly such a clear exposition of the working of the Income Tax Acts. The book is illustrated by many arithmetical examples, the standard of printing and production is high, and the price most reasonable for a book of its length.

Preston and Newsom on Limitation of Actions. Supplement to Third Edition. By G. H. NEWSOM and LIONEL ABEL-SMITH, of Lincoln's Inn, Barristers-at-Law. 1954. London: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

The passing of the Law Reform (Limitation of Actions, etc.) Act, 1954, and the reporting of a number of new decisions affecting the law of limitation have necessitated this supplement. The full text of the Act, together with notes, is given.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Land Registration

Sir,—There was recently some correspondence, arising out of the question of solicitors' costs, about the merits of land registration and I ventured in a letter to you to suggest certain desiderata before that system could be widely accepted. An illustration of one of the points I made is this recent incident.

A purchaser of registered land was granted rights of drainage over an adjoining plot in the following terms :—

> " the right in fee simple in common with the said *X* and its " successors in title to the adjoining property known as " ' Blackacre ' aforesaid (hereinafter called ' the servient " ' tenement ') to use all sewers drains and watercourses " now in or upon the servient tenement or any part thereof " and freely to run and pass water and soil through and " along the same or any of them "

and the servient tenement was granted rights of drainage over the purchaser's property in similar terms. These terms were designed to show as clearly as reasonably possible exactly what rights of drainage were involved for the two properties and they were contained in the transfer. When the land certificate was received from the Registry after registration of the new title it contained a note simply that the purchaser's property had the benefit of " rights of drainage " over " Blackacre " and, in the Charges Register, that it was subject to " rights of drainage." The matter was taken up with the Land Registry, who at first were reluctant to alter the land certificate, apparently on the twin grounds that (*a*) the wording they had used was the usual wording (this, apparently, quite regardless of the fact that it was not the wording used by the parties in the transfer), and (*b*) that such wording, although admittedly vaguer than that in the transfer, did not in their experience cause difficulty. I am glad to say that, as a result of discussion, the Registry agreed to amend the land certificate.

This, sir, I submit, is an illustration of land registration simply not doing its job. Anyone wishing subsequently to find out what were the rights of drainage referred to, in whose favour and over what land, would have to go behind the register and refer to the deeds.

London, S.W.1. I. S. WICKENDEN.

EXCHANGE CONTROL ACT, 1947: SECURITIES

Attention is drawn to new Notices which the Bank of England have issued on behalf of the Treasury. The Notices, which cover the issue, transfer and handling of registered and bearer securities and the collection of income, etc., therefrom, are entitled E.C. Securities 8, 9 and 10, come into force on 10th January, 1955, and replace Notices E.C. (Securities) 1 to 6 inclusive, which will cease to be effective as from that date ; Notice E.C. (Securities) 7, as amended, continues in force. Notices 8 and 9 are of particular interest to solicitors.

The basic exchange control principles as set out in the previous Notices remain unchanged, but certain modifications in procedure which are of considerable importance to solicitors are incorporated.

The changes include the authorisation of solicitors practising in the United Kingdom to act as authorised depositaries which will enable them to retain in their own custody securities which are required to be held by an authorised depositary under the Act. The provisions relating to the deposit of securities are contained in Notice E.C. Securities 9.

Additionally, provided that the underlying transactions are covered by general or specific permissions, authorised depositaries will be able to present transfers of securities, to lodge forms of application, etc., in respect of issues of new securities, and arrange for the registration of bearer securities without the completion of the declaration and authorisation procedure currently in force. In particular the completion of Declarations 1 and 2 of Form D will no longer be required. Solicitors must, however, be satisfied that any conditions attaching to the relevant permission in Notice E.C. Securities 8 are fulfilled ; particular attention should be given to Pts. I and II of that Notice.

Solicitors who take advantage of these arrangements must indicate that they are acting as authorised depositaries by adding " Authorised Depositary : Solicitor(s) " after their stamp or signature on documents (letters, memoranda, etc.), relating to the transactions.

The new arrangements are being introduced as a measure of relaxation and in order to relieve solicitors and others of a very considerable volume of work, but it is essential that solicitors effecting transactions in securities should strictly observe the terms of the new Notices.

Solicitors may obtain copies of E.C. Securities Notices either through their local bank or on request made direct to the Bank of England.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

COPYRIGHT: MUSICAL WORK: RELAYED PUBLIC PERFORMANCE: WHETHER BY " GRAMOPHONE "

Associated Broadcasting Co., Ltd., and Others *v.* Composers, Authors and Publishers Association of Canada, Ltd.

Viscount Simonds, Lord Oaksey, Lord Reid, Lord Tucker and Lord Somervell of Harrow. 1st December, 1954

The short question in this appeal, brought by special leave from an order of the Court of Appeal for Ontario dated 5th March, 1952, was whether the appellants had infringed the respondents' copyright in certain musical works. The answer to that question turned on the true meaning and effect of s. 10B (6) (*a*) of the Copyright Amendment Act (S.C. 1938, c. 27, s. 4), which provided that " In respect of public performances by means of any . . . gramophone in any place other than a theatre . . . to which an admission charge is made, no fees, charges or royalties shall be collectable from the owner or user of the . . . gramophone . . ." The performances in question were relayed from the studio of the appellant broadcasting company to premises in Toronto occupied by the other appellants. The broadcasting company had in its studio equipment consisting, *inter alia*, of turn-tables, operated by an electric motor, on which records of the musical works were placed, and the resulting sound impulses were transmitted, under agreement, over wires of the Bell Telephone Company of Canada to the premises of the other appellants, who had contracted with the broadcasting company to receive the programmes

thus relayed. At the other appellants' premises an acoustic reproduction of the musical works so transmitted was given in public by means of amplifiers and loud-speakers which were owned, installed and maintained by the broadcasting company pursuant to the contract, but were under the control of the other appellants. The trial judge held that, notwithstanding the separation of the component parts of the equipment, the broadcasting company was providing a public performance " by means of a gramophone," and that the same could be said of the other appellants. The Court of Appeal, reversing that decision, held that the totality of the equipment was not a " gramophone " within the meaning of the statute.

VISCOUNT SIMONDS, giving the judgment, said that the argument of the appellants was that " the component parts or means used by the appellants for the performance in public of musical works are the component parts or means composing a gramophone and producing the same result." It appeared to their lordships, however, that the short answer to that argument, and therefore to the appellants' case, was that it begged a question, what was the meaning of the word " gramophone " in the section, by assuming that whatever mechanism upon an analysis of its functions was seen to do what a gramophone did was therefore properly called a gramophone. It was, as their lordships understood the argument, conceded that each one of the several components of the mechanism was an essential part of the gramophone. Therefore, to take a crucial test, the wires under the control of the Bell Telephone Company, which were laid under Parliamentary authority and might be extended for any distance, were a part of the gramophone. Their lordships agreed with the Court of Appeal in thinking that that was nothing less than to distort the meaning of the word " gramophone." It did not appear that that word had acquired a scientific meaning other than its popular or commercial meaning, and in the latter meaning it clearly did not embrace a mechanism which included an undefined length of wiring laid, perhaps under or over public streets under the powers given by Parliament, not by the manufacturer or user of the mechanism, but by an independent authority. That concluded the case. The appeal would be dismissed. The appellants must pay the costs of the appeal.

APPEARANCES: *Harold Fox*, Q.C. (Canada) and *P. Stuart Bevan* (*Sydney Morse & Co.*); *H. E. Manning*, Q.C. (Canada) and *Skone James* (*Syrett & Sons*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 1484**

HOUSE OF LORDS

ADVANCEMENTS TO CHILDREN: ADMISSIBILITY OF EVIDENCE AS TO INTENTION

Shephard *v.* Cartwright

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Tucker and Lord Somervell of Harrow. 1st December, 1954

Appeal from the Court of Appeal ([1953] Ch. 728; 97 SOL. J. 524).

In 1929 a father, with an associate, promoted several private companies and caused the greater part of the shares for which he subscribed to be allotted in varying proportions to his three children, one of them being then an infant. There was no evidence as to the circumstances in which the allotments were made, nor whether any share certificates were issued. The companies were successful and in 1934 the father and his associate promoted a public company which acquired the shares of all the companies for £700,000, of which £300,000 was to be satisfied in cash and £400,000 in shares. The children signed the requisite documents at the request of their father without understanding what they were doing. He received the cash consideration and at various times sold, and received the proceeds of sale of, their shares in the new company. He subsequently placed to the credit of the children respectively in separate deposit accounts the exact amount of the cash consideration for the old shares and round sums in each case equivalent to the proceeds of sale of the new shares. Later he obtained the children's signatures to documents, of the contents of which they were ignorant, authorising him to withdraw money from these accounts, and without their knowledge he drew on the accounts, which were by the end of 1936 exhausted, part of the sums withdrawn being dealt with for the benefit of the children, but a large part remaining unaccounted for. He died in 1949. The question arose whether the shares were an advancement. Harman, J., and the Court of Appeal held that they were not.

VISCOUNT SIMONDS said that the appeal raised questions in regard to the application of the equitable doctrine of advancement which his lordship had regarded as well settled long ago. He would consider what was the result in law or equity of the registration in the names of the children of shares for which the father supplied the cash because the only two facts relied on at this stage to rebut the presumption of advancement (viz., that the children were ignorant and that the certificates were not given to them) were of negligible value. He (his lordship) did not distinguish between the purchase of shares and the acquisition of shares on allotment and the law was clear that, on the one hand, where a man purchased shares and they were registered in the name of a stranger, there was a resulting trust in favour of the purchaser; on the other hand, if they were registered in the name of a child or one to whom the purchaser stood *in loco parentis*, there was no resulting trust but a presumption of advancement. That presumption might be rebutted, but should not give way to slight circumstances. It must then be asked by what evidence the presumption could be rebutted, and it would be unfortunate if doubt were cast on the well-settled law on the subject. It was correctly stated in Snell's Equity, 24th ed., p. 122: " The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration . . . But subsequent declarations are admissible as evidence against only the party who made them, and not in his favour." But, though the applicable law was not in doubt, the application of it was not always easy. There must often be room for argument whether a subsequent act was part of the same transaction as the original purchase or transfer and equally whether subsequent acts which it was sought to adduce in evidence ought to be regarded as admissions by the party so acting and whether, if they were so admitted, further facts should be admitted by way of qualification of those admissions. It had been argued that an inference about the intention of the deceased at the time of the vesting of the relevant shares in the children could be drawn from his manner of dealing with other property which, before or after the transaction in question, he had transferred to one or other of his children. Such evidence could not be regarded as admissible or, if admissible, of any value. This form of evidence was expressly rejected in *Murless* v. *Franklin* (1818), 1 Sw. 13, 19, and his lordship was not aware of any attempt having been made again to introduce it. The first question, then, was whether any subsequent events were admissible as part of the original transaction to prove that the deceased had not in 1929 the intention of advancement which the law presumed. On the facts of this case there were no events which could be so admitted. Could evidence be admitted to rebut the presumption as being admissions against the children's own interest? Such evidence should be regarded jealously. The fact that the children under their father's guidance did what they were told without enquiry or knowledge precluded the admission in evidence of their conduct. The appeal should be allowed.

The other noble and learned lords agreed.

APPEARANCES: *Russell*, Q.C., and *Victor Coen* (*Douglas & Co.*); *Arthur Mulligan* (*MacDonnell & Co.*); *F. B. Alcock* (*Sidney Pearlman*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 967**

PUBLIC AUTHORITIES PROTECTION: RIGHT TO CONTRIBUTION AGAINST JOINT TORTFEASOR: PUBLIC AUTHORITY JOINED OUT OF TIME

George Wimpey & Co., Ltd. *v.* British Overseas Airways Corporation

Viscount Simonds, Lord Porter, Lord Reid, Lord Tucker and Lord Keith of Avonholm. 1st December, 1954

Appeal from the Court of Appeal ([1953] 2 Q.B. 501; 97 SOL. J. 587).

The Law Reform (Married Women and Tortfeasors) Act, 1935, s. 6 (1), provides: " Where damage is suffered by any person as a result of a tort . . . (*c*) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage . . ." An employee of a public authority, who was injured in a collision between one of its vehicles and a vehicle owned by a company, brought an action against the company more than twelve months after the accident, claiming damages for negligence. The company served a third party notice on the public authority claiming contribution under s. 6 (1) (*c*) of the Act in the event of its being found liable to the injured man. Later the public

authority was joined as second defendant and pleaded as a defence to both the claim in the action and the third party proceedings that it was protected by s. 21 of the Limitation Act, 1939, in that the proceedings had not been begun before the expiration of one year from the date on which the cause of action accrued, i.e., the date of the tort. The trial judge found that the public authority was one-third and the company two-thirds responsible for the damage suffered. He gave judgment for the injured man against the company but held that his action against the public authority failed because it was statute-barred. The claim of the company to recover one-third of the damages awarded from the public authority was rejected by the judge, whose decision was affirmed by the Court of Appeal. The company appealed to the House of Lords.

VISCOUNT SIMONDS said that at the hearing of the action and on the appeal two questions were raised on which there was no argument before the House (1) as to the date on which the company's right to contribution arose, and (2) as to the period of limitation in respect of a claim for contribution against a public authority under s. 21 of the Limitation Act, 1939. His lordship was content to assume that the right to contribution arose at any rate not earlier than the date when the existence and amount of the company's liability to the injured man was ascertained by judgment and that the relevant period of limitation was six years. A third question remained and turned on the true construction of s. 6 (1) of the Law Reform (Married Women and Tortfeasors) Act, 1935. Whereas para. (*a*) of the subsection related to the rights of the injured person and substantially altered the law to his advantage, para. (*c*) related to the rights of tortfeasors *inter se* and, to a greater or less degree, according to the interpretation which was put on it, altered the law for the benefit of the tortfeasor who alone had been sued or against whom alone judgment had been recovered. The question of construction was whether s. 6 (1) (*c*) could, according to its natural meaning, be so interpreted as to admit a claim for contribution by one tortfeasor against another when that one had been sued by the injured person and held not liable. The first matter for consideration was what was the meaning of the word "liable" where it was secondly used in s. 6 (1) (*c*), and it was plain that it meant held liable in judgment. In the view which his lordship took it was immaterial whether the word, when first used, had the same meaning or another; if it were necessary to decide it, his lordship would say that it had. Contribution was recoverable from one who in an actual suit by the injured man had been held liable by judgment; it was recoverable from one who, if sued, would in that hypothetical suit have been held liable. Was it also recoverable from one who had been actually sued by the injured man and held not liable? The party from whom contribution was claimed was held not liable because the Limitation Act was successfully pleaded. But this was irrelevant. The same question would arise if the claimant tortfeasor alleged that the defence, though it succeeded on the merits, was only successful because the case had been inadequately presented or even because the judge or jury had taken a wrong view of it. There was, in the words of the Act, the clear intention that the class of persons who "if sued would have been liable" did not include persons who, having been sued, have been held not liable. The words "if sued" postulated the case of someone who had not been sued. The appeal should be dismissed and it was not necessary to discuss the question at what date was the hypothetical suit in which "the other tortfeasor . . . would, if sued, have been liable," to be presumed to have been commenced.

LORD PORTER and LORD KEITH OF AVONHOLM delivered opinions in favour of allowing the appeal.

LORD REID and LORD TUCKER delivered opinions in favour of dismissing the appeal. Appeal dismissed.

APPEARANCES: *Diplock*, Q.C., and *Stanley Rees* (*Stanley and Co.*); *Melford Stevenson*, Q.C., *L. G. Scarman*, and *J. W. Bourne* (*J. H. Milner & Son*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] [3 W.L.R. 932

COURT OF APPEAL

PRACTICE: APPLICATION FOR LEAVE TO APPEAL TO HOUSE OF LORDS

Adler *v.* Dickson and Another

Denning, Jenkins and Morris, L.JJ.
29th October, 5th November, 1954

Application for leave to appeal to the House of Lords.

On the hearing of a preliminary point of law in an action for personal injuries, the defendants were unsuccessful both in the Queen's Bench Division and in the Court of Appeal. They then applied for leave to appeal to the House of Lords.

DENNING, L.J., said that the point of law was important, but an appeal to the House would further delay the trial on the facts, and was undesirable in an interlocutory matter which had been brought on in order to save expense. Counsel for the defendants then suggested that the application should be reviewed if the plaintiff was successful on the facts; the application was stood over for counsel to receive further instructions. At the resumed hearing, counsel for the defendants said that there was a difficulty in the way of standing over the application until the trial on the facts, as under the House of Lords rules an appeal must be lodged within six months from the date of the last order appealed from and it was uncertain when the trial might take place. They suggested that the court might postpone judgment on the preliminary point until the action had been tried.

DENNING, L.J., said that the court had delivered their judgments and could not follow that suggestion.

JENKINS, L.J., said that if leave was refused by the court, and the defendants applied for leave to the House, leave might be given subject to the condition that the appeal should not be heard until after the trial of the action. In *Donoghue* v. *Stevenson* [1932] A.C. 562 it was eventually found at the trial that there was no snail in the bottle at all.

DENNING, L.J., said that if the defendants went to the House immediately, and the House took the view that the facts should be tried first, they could make the necessary order. Leave to appeal would be refused; the defendant could go to the House of Lords, who could make an appropriate order as to time and costs. Leave to appeal refused.

APPEARANCES: *A. A. Mocatta*, Q.C., and *M. Kerr* (*Ince, Roscoe, Wilson & Griggs*); *J. G. Le Quesne* (*Neil Maclean & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1482

COMPULSORY PURCHASE OF AGRICULTURAL LAND: BASIS OF COMPENSATION

Watson *v.* Secretary of State for Air

Evershed, M.R., Jenkins and Birkett, L.JJ.
12th November, 1954

Appeal by case stated by Mr. E. P. C. Done, as arbitrator.

The claimant, Peter Watson, was the yearly tenant of 150 acres of agricultural land near Stamfordham, Northumberland, under a tenancy agreement of 6th March, 1934, which provided by cl. 1 (*c*) that the landlord might resume possession at any time of any part of the farm for any purpose other than purposes of agriculture. The tenancy ran from 12th May. The Secretary of State for Air served notice to treat in respect of some 38 acres of the land on 18th May, 1951, and he entered into possession in August and September, 1951, thus rendering the harvest of the cereal crops impossible. The arbitrator held, having regard to the limitation imposed by cl. 1 (*c*) of the tenancy agreement, that the claimant could not make any claim for compensation in respect of any period beyond the end of the current season of 1951. The claimant appealed, contending that cl. 1 (*c*) was, having regard to the statutes regulating agricultural tenancies, unenforceable at law. That contention was accepted by the respondent, the Secretary of State for Air.

EVERSHED, M.R., said that the compensation had been assessed on a wrong basis and the case would have to be remitted for reconsideration. What had to be valued for the purpose of compensation was an agricultural tenancy liable to be determined on, but not before, 12th May, 1953, and under the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, r. (2), the question to be answered was what would the 38 acres have fetched in the open market if the claimant, being a willing seller instead of being forcibly evicted, had put his interest up for sale. Accordingly, as far as the first season was concerned, he must be entitled to compensation in respect of the profits which he would have made, and he also had a claim for compensation for his interest in the land which would have subsisted until 12th May, 1953, over and above what was allowed for the first year. In computing the notional price it was relevant to consider the profit which the tenant had made in the past, but if the compensation for the further year's interest were properly assessed under r. (2) of s. 2 the claimant was not entitled to claim further under r. (6) for loss of profit in respect of the further year.

JENKINS and BIRKETT, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. Kekwick* (*Herbert Smith & Co.*); *B. S. Wingate-Saul* (*Treasury Solicitor*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 1477

INCOME TAX: PURCHASE OF GRAVEL DEPOSITS: CAPITAL OR REVENUE EXPENDITURE

Stow Bardolph Gravel Co., Ltd. *v.* Poole (Inspector of Taxes)

Evershed, M.R., Jenkins and Birkett, L.JJ.

16th November, 1954

Appeal from Harman, J. ([1954] 1 W.L.R. 1058; *ante*, p. 524).

In 1947, Stow Bardolph Gravel Co. Ltd., a company of sand and gravel merchants, in consideration of a payment of £2,000, acquired the benefit of a contract to take a deposit of sand and gravel. In 1949, they exercised an option contained in the contract, under which they acquired for £2,250 a right to take a further deposit. The appellant company claimed that in the computation of their profits for the purpose of Case I of Sched. D to the Income Tax Act, 1918, they were entitled to deduct these sums on the ground that this was expenditure incurred in the acquisition of trading stock, or expenditure of a revenue character wholly and exclusively for the purpose of the company's trade. The General Commissioners (for Freebridge Marshland in the county of Norfolk) held that the two sums in question were not admissible as deductions, but on appeal by case stated Harman, J., held that they were legitimate deductions, being expended for the purchase of stock-in-trade. The Crown appealed.

EVERSHED, M.R., said that the two sums were not admissible as deductions in the computation of the company's profits, for by the contract and option the company did not acquire any proprietary right in the deposits *in situ* but merely had the right to work them and to take away what was won. The company had not, on the facts, purchased stock-in-trade readily identifiable as such from the moment of purchase but merely a means of getting gravel and sand which when excavated and taken into possession would be part of their stock-in-trade. The case was, therefore, distinguishable on the facts from *Golden Horse Shoe (New), Ltd.* v. *Thurgood* [1934] 1 K.B. 548; 18 Tax Cas. 280, but the principle as stated by Romer, L.J., at p. 563, applied.

JENKINS, L.J., and BIRKETT, L.J., agreed. Appeal allowed.

APPEARANCES: *Sir Lynn Ungoed-Thomas*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *Hilary Magnus* (*Metcalfe, Copeman & Pettefar*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R 1503**

MASTER AND SERVANT: HARBOURING OF SERVANT BY ANOTHER EMPLOYER

Jones Brothers (Hunstanton), Ltd. *v.* Stevens

Lord Goddard, C.J., Hodson and Romer, L.JJ.

19th November, 1954

Appeal from Hallett, J., sitting at Norfolk Assizes.

The plaintiffs, who carried on a restaurant and a fried fish bar, had in their service a fish frier. The employee, during the currency of his contract with the plaintiffs, applied to the defendant, an hotel proprietor in the same town, for the position of assistant chef. At the time of such application the defendant did not know of the man's existing contract with the plaintiffs, and he was duly engaged. On the same day the defendant was informed by the plaintiffs' director of the man's contract with the plaintiffs, but retained him in his employment. The plaintiffs brought an action against the defendant for wrongfully enticing their servant to break his contract of service with them and for harbouring him by taking him into and keeping him in his employment when he knew that the servant had broken his contract of service with the plaintiffs. Hallett, J., held on the facts that the defendant had not enticed or procured the servant to break his contract; that the defendant honestly believed that he was at liberty to employ the plaintiffs' servant; and that in those circumstances the plaintiffs had no cause of action against the defendant for harbouring their servant after notice that he had broken his contract with them. The plaintiffs appealed in regard to the question of harbouring only.

LORD GODDARD, C.J., reading the judgment of the court, said that, subject to what they had to say about proof of damage, it was actionable to continue to employ the servant of another, after notice, although the person continuing to employ the servant did not procure him to leave his master or know when he engaged him that he was the servant of another. It was now established beyond controversy by a series of decisions following that in *Blake* v. *Lanyon* (1795), 6 Term Rep. 221, that the violation of a legal right committed knowingly was a cause of action if damage was caused thereby. The misconception in the present case probably arose from the fact that it had been said that in this class of case the defendant must have acted maliciously. For that purpose maliciously meant no more than knowingly. Malice in law meant the doing of a wrongful act intentionally without just cause or excuse. In the present case, Hallett, J., took the view that the defendant, in spite of the notice he had received, was under the honest belief that he was entitled to employ the plaintiffs' servant and accordingly he (Hallett, J.) did not consider whether damage or injury was necessary to support the action. The judge found as a fact, and the court agreed with him, that the servant would not have gone back to the plaintiffs' service whether the defendant continued to employ him or not. If, therefore, he would not have returned how could it be said that the plaintiffs suffered any damage because the defendant employed him? No doubt at the present day, if a servant, domestic or otherwise, broke his contract of service, he or she might put the employer to the greatest inconvenience and might cause him actual pecuniary loss. For so doing the servant was liable to an action for damages and if a third party had enticed or procured the breach, he too would be liable. But if, not having enticed the breach, a person employed the servant of another who would not in any case have returned to the first employer, while the servant remained liable, the second employer would not, since his action had caused no damage to the original master. For that reason, though different from that on which Hallett, J., decided the case, they were of opinion that the appeal failed and must be dismissed. Appeal dismissed.

APPEARANCES: *J. Elton* and *M. C. Parker* (*Stuart C. Myers*, for *Cozens-Hardy & Jewson*, Norwich); *Lord Hailsham*, Q.C., and *C. Bülow* (*Metcalfe, Copeman & Pettefar.*)

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[3 W.L.R. 953**

PRACTICE: APPEAL: APPLICATION TO CALL WITNESS TO CONTRADICT HER EVIDENCE GIVEN AT TRIAL

Ladd *v.* Marshall

Denning, Hodson and Parker, L.JJ.

25th November, 1954

Appeal and motion for leave to call further evidence.

In an action tried before Glyn-Jones, J., the plaintiff claimed from the defendant £1,000, said to have been demanded by the defendant and paid by the plaintiff in cash as a secret and illegal addition to the contract price on the sale of a bungalow by the defendant to the plaintiff. He called witnesses to confirm the fact of payment, including the defendant's wife, who professed to remember nothing of the matter. Glyn-Jones, J., disbelieved the plaintiff's evidence and gave judgment for the defendant. The defendant and his wife having been divorced, the wife informed the plaintiff's solicitors that her evidence at the trial had been false, and that she had seen £1,000 in notes handed by the plaintiff to the defendant. The plaintiff appealed and moved for leave to adduce further evidence by the wife, who stated in an affidavit that she had at the time feared physical violence from her husband if she told the truth.

DENNING, L.J., said that it was rare for such applications to be made on the ground that a witness had told a lie. To justify the reception of fresh evidence three conditions must be fulfilled: first, that the evidence could not with reasonable diligence have been obtained at trial; secondly, that the evidence must be such as to have probably an important influence on the result; and thirdly, that the evidence must be apparently credible, though not necessarily incontrovertible. A confessed liar could not usually be accepted as being credible, and good reason must be shown why a lie was told at first and why truth should be expected in the future. Bribery, or coercion, or a wish to correct a mistake relating to an important matter might be ground for a new trial (see *Richardson* v. *Fisher* (1823), 1 Bing. 145). The defendant's wife was not a person who could presumably be believed. Her suggestion of coercion could not be accepted, and it would be contrary to all principle to admit such evidence.

HODSON and PARKER, L.JJ., agreed. Appeal dismissed, and motion refused.

APPEARANCES: *F. W. Beney*, Q.C., and *T. M. Eastham* (*G. Swinburne Raynes*, for *Atkins, Walter & Locke*, Guildford); *Ewen Montagu*, Q.C., and *H. W. Sabin* (*Owen White & Catlin*, Feltham).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1489**

CHANCERY DIVISION

COMPANY: MEETING: QUORUM

***In re* Hartley Baird, Ltd.**

Wynn Parry, J. 29th November, 1954

Petition for reduction of capital.

Article 52 of a company's articles of association provided: "No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. . . ." The quorum required by the company's articles for a meeting to alter the rights of a class of shareholders was present at the beginning of the meeting and when it proceeded to consider the business for which it was called, but it was reduced below the number required for a quorum before the vote was taken on the resolution because one member, who was opposed then to the resolution, left the meeting before the vote was taken. The court was asked to decide as a preliminary point whether as a result of that act no valid resolution was passed at the meeting.

WYNN PARRY, J., said that the language of article 52, on the face of it, was quite clear. It provided that no business was to be transacted at a general meeting unless a condition was fulfilled, and that condition was a composite one. It required not only that a quorum was to be present, but qualified that by saying that the quorum was to be present when the meeting proceeded to business. It could only be by implication that that language could be extended to cover the position when the meeting proceeded to the vote. He would have felt no doubt but for *Henderson* v. *James Louttit & Co., Ltd.* (1894), 21 R. (Ct. of Sess.) 674, where the court took the view that a quorum must not only be present at the commencement of the meeting, but also at the time when the business was transacted. It appeared to him that that statement to that effect in that case could to a great extent be properly regarded as *obiter dictum*. In any event, he felt compelled primarily to concentrate on the language of the two relevant articles before him and had come to the conclusion that he ought not to follow the Scottish case, but to conclude that at the meeting in question a valid class resolution was passed, because at the beginning of the meeting, that is, when the meeting proceeded to business, there was present a quorum as provided by the articles. On hearing the rest of the petition, Wynn Parry, J., made an order confirming the reduction of capital. Reduction of capital confirmed.

APPEARANCES: *Charles Russell*, Q.C., and *K. W. Mackinnon* (*Frere, Cholmeley & Nicholsons*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [3 W.L.R. 964

POWER OF APPOINTMENT: GIFTS BY WILL TO TESTATOR'S "FRIENDS" NOMINATED BY WIDOW: WHETHER VOID FOR UNCERTAINTY

***In re* Coates, deceased; Ramsden *v.* Coates**

Roxburgh, J. 3rd December, 1954

Adjourned summons.

A testator by his will, after making provision for his wife and bequeathing a number of pecuniary legacies, directed: "If my wife feels that I have forgotten any friend I direct my executors to pay to such friend or friends as are nominated by my wife a sum not exceeding £25 per friend with a maximum aggregate payment of £250 so that such friends may buy a small memento of our friendship. I have forgotten *A* and *B* and *C* but my wife will put that right." A summons was taken out to ascertain whether or not this provision was void for uncertainty.

ROXBURGH, J., said that his decision would not affect the question whether a gift in favour of a testator's friends, without qualification, would be valid. In consequence two old cases, *Gower* v. *Mainwaring* (1750), 2 Ves. Sen. 87, and *In re Caplin's Will* (1865), 2 Dr. & Sm. 527, in which it was decided that "friends and relations" meant relations only, could be discarded. Guidance was afforded by *In re Gestetner Settlement* [1953] Ch. 672, where Harman, J., drew the distinction between a power coupled with a duty and a power collateral. If the power was coupled with a duty, the whole class eligible to take must be ascertainable *a priori*; if it was collateral, it was sufficient that John Doe or Richard Roe could be postulated to be within the class eligible as proper objects of the power. In the present case the power of appointment given to the widow was plainly collateral, and the question was whether there was in the context such a degree of uncertainty about the word "friends" as to justify the conclusion that the gift was bad. Having regard to the language and the context, the gift contemplated a degree of intimacy which made its detection quite easy. The widow, or the court with the assistance of her evidence, could easily decide whether any particular John Doe or Richard Roe was or was not within the contemplation of the testator as a friend whom he had forgotten, but who was of such a degree of intimacy to receive a limited gift to be expended on a memento. The power was accordingly valid. Declaration accordingly.

APPEARANCES: *R. Gwyn Rees*; *G. H. Newsom*; *J. A. Brightman* (*Church, Adams, Tatham & Co.*, for *Day & Yewdall*, Leeds); *R. S. Lazarus* (*Theodore Goddard & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 959

WILL: CHARITY: GIFT TO BOY SCOUTS' MOVEMENT

***In re* Webber; Barclays Bank *v.* Webber**

Vaisey, J. 30th November, 1954

Originating summons.

A testator, by his will, directed that certain surplus income should be devoted to "the furthering of the Boy Scouts' movement, by helping to purchase sights [*sic*] for camping, outfits, etc." By a Royal Charter granted to the Boy Scouts Association in 1912, its purpose was stated as the instruction of "boys of all classes in the principles of discipline, loyalty and good citizenship." The question on the summons was whether this gift was a good charitable gift.

VAISEY, J., said that the incorporated association had been treated as a charity since 1912. The purpose as stated in the Charter described one of the most important elements in education. Apart from authority, the movement was quite plainly charitable, and it appeared that Clauson, J., had so held in *In re Alexander* (*The Times*, 30th June, 1932) where the gift was "for the purpose of creating a fund for providing holiday camps for the boy scouts of Clapham and Brixton." There would be a declaration that the gift was a good charitable gift. Declaration accordingly.

APPEARANCES: *R. Cozens-Hardy Horne*; *R. O. Wilberforce*, Q.C., and *Ian Campbell* (*Freshfields*); *N. Browne-Wilkinson* (*Taylor, Willcocks & Co.*); *G. Cross*, Q.C., and *R. R. A. Walker* (*Longbourne, Stevens & Powell*); *D. Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1500

QUEEN'S BENCH DIVISION

BUILDING CONTRACT: R.I.B.A. FORM NO. 6: WHETHER ARCHITECT'S FINAL CERTIFICATE OPEN TO REVIEW BY ARBITRATOR

Windsor R.D.C. *v.* Otterway & Try, Ltd.

Devlin, J. 25th November, 1954

Special case stated by an arbitrator.

In a building contract (R.I.B.A. Contract No. 6), cl. 24 (*f*) provided: ". . . the architect shall . . . issue a final certificate and such final certificate . . . shall be conclusive evidence as to the sufficiency of the said works and materials." Clause 27, after providing for arbitration, stated: ". . . the arbitrator shall have power . . . to open up, review and revise any certificate . . . in the same manner as if no such certificate . . . had been given." A dispute having arisen under the contract, the point arose whether the arbitrator had power to reopen the final certificate.

DEVLIN, J., said that he would assume that cl. 24, taken by itself, provided that the architect's certificate was to be final and conclusive for all relevant purposes. But cl. 27 gave to the arbitrator in express terms the power to revise any certificate as if it had not been given. No case had been cited to cover the wide words of cl. 27. The contractors had contended that cl. 27 referred only to an interim certificate, but there was no justification for so limiting its language. They had also contended that as the word "conclusive" was used in cl. 24, some meaning must be given to cl. 27 which gave effect to that word. But no meaning could be given to it which did not destroy the meaning of cl. 27. The only way to construe the contract was to say that the words "final" and "conclusive" in cl. 24 meant that they were so subject to the arbitrator's powers under s. 27. Accordingly, the arbitrator had power to make an award as if no final certificate had been given. Case remitted.

APPEARANCES: *J. G. K. Sheldon* (*Bower, Cotton & Bower*, for *T. W. Stuchbery & Son*, Windsor); *K. J. P. Barraclough* (*McNamara, Ryan & Co.*, Chertsey).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1494

SURVEY OF THE WEEK

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Kent Water Bill [H.C.] [8th December.
Road Traffic Bill [H.L.] [7th December.

To amend the law relating to road traffic, the provision of parking places, driving licences and certificates of insurance, the licensing of vehicles and the regulation of public service vehicles; and for purposes connected therewith.

Read Second Time :—

Dunoon Burgh (Pavilion Expenditure) Order Confirmation Bill [H.C.] [7th December.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

National Insurance Bill [H.C.] [9th December.
New Towns Bill [H.C.] [10th December.
Wireless Telegraphy (Validation of Charges) Bill [H.C.] [10th December.

B. Questions

Pensions Appeals (Legal Costs)

Mr. Wyatt asked the Attorney-General (1) whether he would make an *ex gratia* payment to Mr. G. A. Foster for the costs of bringing an appeal against a departmental decision, although it was subsequently found that the appeal was unnecessary because the decision was rescinded; (2) whether he would introduce legislation making it possible for the costs of appellants to pensions appeal tribunals to be reimbursed when it was considered that they had reasonable grounds for appeal. Mr. Wyatt said that Mr. Foster went to considerable expense to assemble the evidence, which he did with the assistance of a solicitor, and that if he had not employed a solicitor his appeal would not have been advanced or heard. Although he had engaged a solicitor, he had then been told that he should have done that through the British Legion; surely there was nothing to compel anybody to employ the British Legion. The Attorney-General said that the Pensions Appeal Tribunals Act, 1943, made no provision for the award of legal costs, except in the case of appeals to the High Court, and the attention of all would-be appellants was drawn to that fact. The informal procedure before the tribunals was expressly designed to make legal representation unnecessary. In this case, the decision had been reversed because of further medical reports submitted by the appellant. He had no evidence to show that there was any justification for amending the law and he was not prepared to recommend an *ex gratia* payment. [6th December.

Legal Aid (County Court Proceedings)

The Attorney-General said that it was the Government's intention to introduce legislation to extend county court jurisdiction, but he was not yet in a position to say when that would be. The Government considered that, if the jurisdiction of the county court was to be increased, legal aid should be made available for all types of county court proceedings which were covered by the Legal Aid and Advice Act, 1949, and in due course the Lord Chancellor would make the appropriate order under the Act for this purpose. The Government could not at present see their way to any further extension of the Act. [6th December.

Land Charges (Report)

The Attorney-General said that the Committee appointed on 1st October to examine the question of land charges was now receiving evidence. He was not yet in a position to say when it would report. [6th December.

Rent Increases Met by National Assistance Board

Asked whether the Minister of Pensions and National Insurance would authorise a check, in the case of pensioners whose rent was met by the National Assistance Board, on the accuracy of increases under the Housing Repairs and Rents Act, 1954, Mr. Marples said that every increase reported to the Board was examined, but they could not take over the duty of giving legal advice to tenants regarding rents. [6th December.

Town and Country Planning Act, 1954 (Appointed Day)

Mr. Duncan Sandys said that he had made an order appointing 1st January, 1955, as the date of commencement of the Town and Country Planning Act, 1954, for all purposes. He had also made regulations governing the procedure for applying to the Central Land Board for payments under Pt. I of the Act, and for claiming from the Minister compensation in respect of planning decisions. [6th December.

Private Companies (Directors' Bonuses)

Mr. R. A. Butler said that, where a private company voted a bonus to a director and credited the amount to a loan or current account over which he had control, that was normally treated as amounting to payment, and the appropriate tax must then be handed over to the Revenue. [7th December.

Life Insurance Policies (Surrender Values)

Mr. K. Brooke said that the law made no provision about the surrender of ordinary whole-life policies. It provided a right to surrender, and it prescribed the minimum surrender value of, industrial whole-life policies only when the owner went to live abroad or the life assured had vanished. He understood that, in practice, most offices offered more than these statutory minima and made discretionary payments in cases of hardship. He hoped all offices would continue to treat all such cases reasonably and sympathetically. He was not at present satisfied that any general inquiry was called for. [8th December.

STATUTORY INSTRUMENTS

Agricultural and Vegetable Seeds (Revocation) Order, 1954. (S.I. 1954 No. 1602.)
Agricultural Seeds and Growing of Seed Crops (Revocation) Order, 1954. (S.I. 1954 No. 1603.)
Central Land Board Payments Regulations, 1954. (S.I. 1954 No. 1599.) 5d.
As to these regulations, see p. 859, *ante*.
County of Inverness (Allt Coineag, Invermoriston) Water Order, 1954. (S.I. 1954 No. 1601 (S. 177).) 5d.
Dumfries-Kilmarnock Trunk Road (London Road near Hurlford) Order, 1954. (S.I. 1954 No. 1605.)
Exchange of Securities (No. 6) Rules, 1954. (S.I. 1954 No. 1597.) 5d.
Firearms Rules, 1954. (S.I. 1954 No. 1616.) 6d.
Hull and East Yorkshire River Board (Prevention of Pollution) (Tidal Waters) Order, 1954. (S.I. 1954 No. 1604.) 5d.
Iron and Steel Scrap Order, 1954 (S.I. 1954 No. 1593.) 11d.
London-Aylesbury-Warwick-Birmingham Trunk Road (Heath Bridge Diversion) Order, 1954. (S.I. 1954 No. 1591.)
Merchant Shipping Medical Scales (Fishing Boats) Order, 1954. (S.I. 1954 No. 1595.) 8d.
Pocklington Rural Water Order, 1954. (S.I. 1954 No. 1615.)
Public Service Vehicles (Conditions of Fitness) (Amendment) Regulations, 1954. (S.I. 1954 No. 1613.)
Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations, 1954. (S.I. 1954 No. 1612.) 5d.
Purchase Tax (No. 6) Order, 1954. (S.I. 1954 No. 1608.) 6d.
Registration (Births, Still-Births, Deaths and Marriages) Consolidated Regulations, 1954. (S.I. 1954 No. 1596.) 1s. 8d.
Safeguarding of Industries (Exemption) (No. 11) Order, 1954. (S.I. 1954 No. 1609.)
South Essex Waterworks Order, 1954. (S.I. 1954 No. 1610.) 6d.
Stopping up of Highways (St. Helens) (No. 1) Order, 1954. (S.I. 1954 No. 1606.)
Strategic Goods (Control) Order, 1954. (S.I. 1954 No. 1622.) 11d.
Strength of Spirits Ascertainment Regulations, 1954. (S.I. 1954 No. 1611.)
Town and Country Planning Act, 1954 (Appointed Day) Order, 1954. (S.I. 1954 No. 1598 (C. 17).)
As to this order, see p. 827, *ante*.
Town and Country Planning (Compensation) Regulations, 1954. (S.I. 1954 No. 1600.) 6d.
As to these regulations, see p. 859, *ante*.
Transport Charges (Tramways and Trolley Vehicles) Regulations, 1954. (S.I. 1954 No. 1614.) 5d.
Ware Potatoes (Amendment No. 2) Order, 1954. (S.I. 1954 No. 1594.)
West of Southampton-Salisbury-Bath Trunk Road (Whaddon Diversion) Order, 1954. (S.I. 1954 No. 1592.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Company Ceasing to Carry on Business—Initiating Removal from Register

Q. Is there any way, short of going to the expense of preparing accounts and winding up a company voluntarily, of taking it off the register where it has ceased trading? The case I have in mind is a client of mine who holds the overriding interest in a company which has shut down business, and he is going to expense each year in instructing his accountant to prepare figures for an annual return which are the same each year. When the client spoke to his accountant about taking the company off the register, he was told it would cost £18 18s. to wind up, and it seems to me in such a case that a simple letter to the registrar would have the effect of taking the company off the file or default in some other respect would have the effect of giving the registrar power to remove the company from the file himself.

A. If there is reasonable cause to believe that a company is not carrying on business or is not in operation, the company may be struck off the register under s. 353 of the Companies Act, 1948, following the procedure therein laid down. While the wording of the section envisages cases where the registrar initiates action, e.g., after failure to file annual returns, it is now common practice for a company to write to the registrar and invite him to exercise his powers, and the registrar exercises such powers quite freely. We would recommend (*a*) that the directors and secretary resign so as to avoid liability for the non-filing of future returns, and (*b*) that a letter is sent from the company to the registrar enclosing Form 9A, informing him that the company has ceased to carry on business and inviting him to strike the company off the register.

Estate Duty—Failure to Render Account on Death of Life Tenant—Accountability for Duty, Interest and Costs

Q. *A* died some years ago, having by his will appointed *X* and *Y* to be his executors. He left a fund to *B* for life (*B* not being a spouse) and after *B's* death to devolve on *C*, *D*, *E* and *F*. *A's* will was duly proved by the executors, and the life tenant *B* died shortly after *A* with practically no separate estate. The executors thereupon divided up the settled sum between the beneficiaries, *C*, *D*, *E* and *F*, without apparently having notified the estate duty authorities or having made any reserve for estate duty payable upon the death of *B*. The beneficiaries gave receipts for their share in the estate. Some years later an inquiry was received by the executors from the estate duty department inquiring whether *B* was still living, and upon his death being reported, an account was called for and rendered, and the beneficiaries are now faced with a claim for estate duty, for about nine years' interest and for the solicitors' costs in connection with rendering the account. We are asked to advise the beneficiaries. We believe that the executors have the right to follow the asset against the beneficiaries to reimburse themselves against the estate duty, but we are wondering in the circumstances whether the beneficiaries can be called upon to pay the interest and the cost of rendering the account, since it seems to us that these arise from the failure of the executors or their legal advisers to advise the authorities of the death of the life tenant. One of the executors is also the solicitor to the trust.

A. Observe that on the death of *B* the property in question was vested, not in his executor, but in *X* and *Y* as trustees of the trusts declared by *A's* will. Accordingly, the personal representatives of *B* would in no case be accountable for the duty thereon, and accordingly the Finance Act, 1894, s. 8 (4) applies, so that as between the Crown on the one hand and *C*, *D*, *E* and *F* on the other, the latter are accountable for the duty, and we know of no principle whereby they are not also accountable for the interest thereon. The question then is whether they have any claim over against *X* and *Y* for costs or interest. So far as costs are concerned, it is clear that if the account had been rendered at the proper time, some costs would have been incurred and these costs would properly be charged to the trust property before it was handed over to *C*, *D*, *E* and *F*. We do not really see why they should fall any the less on the beneficiaries because they are paid later rather than earlier. But it may well be that, as a result of correspondence, etc., the costs incurred now are greater than if the thing had been done at the proper time: to that extent we think the difference should fall on *X* and *Y*. So far as interest is concerned, it seems to us that the beneficiaries have had the use of the money for nine years—which they would not have had if the duty had been paid in the first place—and we do not quite see why they should retain the interest earned by the money, or which might have been earned by the money, in their hands and yet refuse to pay the interest demanded by the Crown. That interest, be it noted, is net of income tax and so will not affect the income tax payable by the beneficiaries. But to the extent that any of them are liable to pay sur-tax, the interest now payable will be deductible and an error or mistake claim will lie for the next six years. Such a claim will not lie for the previous three years and to the extent that any beneficiary has thereby paid more sur-tax than he would otherwise have done, we think it possible that he has a claim against *X* and *Y*.

Abstract of Title—Supplemental Deed—Whether Purchaser Entitled to Abstract of Principal Deed Prior to Contractual Root

Q. In a sale of former settled land, the stipulated root of title is a disentailing assurance of 1894, which recites a settlement of 1867. The disentailing assurance conveys the estate subject to the charges and incumbrances subsisting at the date of the said settlement. The first mention in the abstract to these charges and incumbrances is in a deed of appointment of 1914 of trustees of the mortgage debt which recites a transfer of 1869 of a mortgage debt for £40,000 and numerous sub-mortgages. The abstract subsequently shows the discharge of some, but not all, of the sub-mortgages. Relying on the second proviso to s. 45 (1) of the Law of Property Act, 1925, the purchasers' solicitors asked for abstracts of the original deed relating to the mortgage debt of £40,000 and of all subsequent transfers of the debt, and also for abstracts of such of the sub-mortgages as are still subsisting. The vendor's solicitors replied that as the property sold will be released from the mortgages, the proviso relied upon did not apply, and they also referred to s. 58 of the Law of Property Act, 1925. Are the vendor's solicitors right?

A. In our opinion, the purchasers are entitled to an abstract of the original mortgage and of all subsequent transfers. The appointment of 1914 assures the mortgagees' estate, subject to the provisions of the original mortgage, which is thus a "document creating . . . an interest, etc., . . . subject to which . . . the property is disposed of by an abstracted document" within the proviso to s. 45 (1) of the Law of Property Act, 1925, referred to by our subscribers. We do not consider that s. 58 of the Law of Property Act, 1925, affects the position, for even if the mortgage and transfers were recited in the appointment of 1914 (see operative part of s. 45 (1)), the proviso still entitles a purchaser to copies.

Town and Country Planning—Development Offensive to Amenities by Government Department or Local Authority

Q. An interesting point has arisen in Circular 63/51 of the Ministry of Housing and Local Government. Is the procedure laid down under s. 26 of the Town and Country Planning Act, 1947, considered to be applicable to development by Government departments which is subsequently found to be offensive to local amenities, or what steps are considered open to a local authority to take in order to obtain an inquiry by the Minister of Housing and Local Government into the activities of another Government department which appear to be offensive to local amenities? A similar question also arises in connection with development by local authorities themselves which is subsequently found by residents to be offensive and to transgress what are considered to be proper planning principles.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

A. Circular 63/51 of the Ministry of Housing and Local Government does not concern development by Government departments. Planning permission is not required for development by these departments, but the procedure whereby local authorities are consulted prior to the carrying out of such development is set out in Ministry of Town and Country Planning Circular No. 100, dated 7th December, 1950 (see also Ministry of Local Government and Planning Circular No. 28, dated 12th April, 1951, as to development connected with the defence programme). Section 87 (3) of the Town and Country Planning Act, 1947, precludes the making of a s. 26 order in respect of Crown land (which includes land belonging to a Government department) without the consent of the appropriate authority as defined in subs. (6), i.e., in the case of land belonging to a Government department, that department. From the practical point of view, therefore, s. 26 is not available. The most practical method of trying to obtain an inquiry is to make representations direct to the Ministry of Housing and Local Government, possibly with a request for the reception of a deputation from the local authority. This should be backed up by enlisting the support of the local Member of Parliament. The Minister of Housing and Local Government has no direct control over the activities of other departments, and the Ministry will probably be found to be reluctant to have anything to do with the matter. If an inquiry is obtained it will probably be a joint one on behalf of both the Minister concerned and the Minister of Housing and Local Government, the decision being taken by the former. In the case of local authority development, there is nothing to prevent the local planning authority from making an order under s. 26 of the 1947 Act, or, if they refuse to do so, representations may be made to the Minister for the exercise of his default powers under s. 100 (2) (*c*) of the Act. In practice, however, he is usually unwilling to use his powers under s. 100, at any rate unless the issue is a very substantial one, though he might do so if the development complained of is by the local planning authority themselves. It should be noted that the Minister may refuse to confirm a s. 26 order without holding a local inquiry.

NOTES AND NEWS

Honours and Appointments

Mr. RICHARD NEVILLE DALTON HAMILTON, senior assistant solicitor to Buckinghamshire County Council, has been appointed deputy clerk in succession to Mr. Richard Edward Millard.

Mr. GORDON HEWETT RAMAGE, LL.B., assistant solicitor to Bromley Corporation, has been appointed assistant solicitor to Walthamstow Borough Council. Mr. LEONARD JOHN NICE, legal assistant, is to succeed Mr. Ramage as assistant solicitor as from 29th November.

Mr. RAMPERSAD NEERUNJUN, O.B.E., Substitute Procureur and Advocate General, Mauritius, has been appointed to be Puisne Judge, Mauritius; and Mr. J. L. WILLS, Magistrate, British Guiana, to be Puisne Judge of the Supreme Court of the Windward and Leeward Islands.

Personal Notes

Mr. Luke Horsfield, solicitor, of Halifax, and Mrs. Horsfield celebrated their diamond wedding on 10th December.

Mr. William Ernest Spencer Seale celebrated on 4th December his sixtieth anniversary in the service of Messrs. Wykes, Francis and Moult, solicitors, of Derby. Mr. Seale, who is managing clerk, was presented with a camera.

Alderman Thomas Smailes, clerk to the magistrates of the West Riding Upper Agbrigg Division sitting at Huddersfield and Holmfirth, since 1936, is to resign this office for health reasons.

Miscellaneous

The Lord Chancellor has ordered that His Honour Judge Clothier, Q.C., shall cease to be one of the judges for the districts of Aldershot, Dorking, Epsom, Farnham, Guildford, Horsham and Reigate County Courts, and that His Honour Judge Gordon Clark shall cease to be one of the judges for the district of Lambeth County Court, and shall sit as additional judge at that court. The order will come into operation on 1st January, 1955.

Wills and Bequests

Mr. A. Bastide, retired solicitor, of Brighouse and Elland, left £7,301 (£7,235 net).

SOCIETIES

GRAY'S INN

The Right Hon. The Lord High Chancellor was entertained in Gray's Inn Hall on 8th December at a house dinner. Lady Kilmuir and many of the Benchers' ladies occupied seats in the gallery. His Royal Highness the Duke of Gloucester, K.G., K.T., K.P., G.M.B., G.C.M.G., G.C.V.O. (Treasurer), presided and proposed the toast of "The Lord Chancellor." The following Masters of the Bench were also present: The Hon. Mr. Justice Hilbery (Deputy-Treasurer); Mr. N. L. C. Macaskie, Q.C.; Sir Harold Derbyshire, M.C., Q.C.; Mr. R. Warden Lee; The Very Rev. W. R. Matthews, K.C.V.O.; Sir Arthur Comyns Carr, Q.C.; Sir Arnold McNair, C.B.E., Q.C.; The Hon. Mr. Justice Sellers, M.C.; The Hon. Mr. Justice Barnard; The Right Hon. Sir Hartley Shawcross, Q.C., M.P.; Sir Leonard Stone, O.B.E.; Mr. Sydney Pocock, O.B.E.; Sir John Forster, K.B.E., Q.C.; Mr. Henry Salt, Q.C.; Mr. H. B. D. Grazebrook, Q.C.; Mr. Michael Rowe, C.B.E., Q.C.; Mr. Robert Falco; Mr. Percy Lamb, Q.C.; The Hon. Mr. Justice Devlin; Mr. J. W. Brunyate; The Right Hon. The Lord Reid; The Hon. Mr. Justice Gerrard; Mr. George Pollock, Q.C.; Mr. H. E. Davies, Q.C.; The Right Hon. Sir Lionel Leach, Q.C.; Mr. A. P. Marshall, Q.C.; The Right Hon. Selwyn Lloyd, C.B.E., Q.C., M.P.; Sir Edward Maufe, R.A., F.R.I.B.A.; Mr. R. C. Vaughan, O.B.E., M.C., Q.C.; Mr. G. W. Tookey, Q.C.; Mr. Dingle Foot, Q.C.; The Right Hon. L. M. D. de Silva, Q.C.; Mr. J. R. Willis; Mr. David Karmel, Q.C.; Mr. Christopher Shawcross, Q.C.; and the Under-Treasurer (Mr. O. Terry).

The twenty-third annual dinner of the HASTINGS AND DISTRICT LAW SOCIETY was held at the Sackville Hotel, Bexhill-on-Sea, on 19th November and was attended by over 220 members and guests. The president of the Society, Mr. St. J. G. A. Sechiari, was in the chair. The guests included His Honour Judge B. E. Dutton Briant, Q.C.; Mr. G. A. Thesiger, Q.C., Recorder of Hastings, and Mr. A. Melford Stevenson, Q.C., Recorder of Cambridge.

The LAW STUDENTS DEBATING SOCIETY announce the following programme for January, 1955: 11th, Debate: "That this House is of the opinion that a majority verdict should be sufficient in trials by jury." In the affirmative: Mr. J. E. Hall Williams; in the negative: Mr. D. Curtis Bennett, Q.C. 18th, Quarterly meeting followed by an impromptu debate. 25th, Joint debate with the London Publicity Club.

At the annual dinner of the BIRMINGHAM LAW STUDENTS' SOCIETY, held on 10th December, Lord Justice Jenkins was in the chair. Among those present were Sir Arthur F. B. fforde, headmaster of Rugby School and a solicitor; Mr. Justice Davies; Mr. Colin Coley; Judge A. H. Forbes; Mr. J. G. Haslam; and Professor T. Bodkin.

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